

No. 12500

United States
Court of Appeals
for the Ninth Circuit.

ALEXANDER & BALDWIN, LIMITED, a Corporation,

Appellant,

vs.

AGNES M. KANNE, Executrix under the Will and
of the Estate of Fred H. Kanne, Collector of
Internal Revenue of the United States for the
District of Hawaii,

Appellee.

Transcript of Record

Appeal from the United States District Court
District of Hawaii.

FILED

MAY 23 1950

PAUL P. O'BRIEN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF
ATTORNEYS OF RECORD

For the Plaintiff, Alexander & Baldwin, Limited,
PRATT, TAVARES & CASSIDY, By
C. DUDLEY PRATT, ESQ., and
VERNON O. BORTZ, ESQ.,

Alexander & Baldwin Building,
Honolulu, T. H.

For the Defendant, Agnes M. Kanne, etc.,
RAY J. O'BRIEN,

United States Attorney,
District of Hawaii,
Federal Building,
Honolulu, T. H.

In the United States District Court for the
Territory of Hawaii

Civil Action No. 474

ALEXANDER & BALDWIN, LIMITED, a
Hawaiian Corporation,

Plaintiff,

vs.

FRED H. KANNE, Collector of Internal Revenue
of the United States for the District of Hawaii,
Defendant.

COMPLAINT

To the Honorable United States District Court for
the Territory of Hawaii:

Comes now Alexander & Baldwin, Limited, a
Hawaiian corporation, plaintiff, and complaining of
Fred H. Kanne, Collector of Internal Revenue of
the United States for the District of Hawaii, de-
fendant, for cause of action alleges as follows:

I.

That Alexander & Baldwin, Limited, plaintiff
above named, now is and at all times herein men-
tioned was a corporation incorporated under the
laws of the Territory of Hawaii having its princi-
pal office and place of business in Honolulu, City
and County of Honolulu, Territory of Hawaii, and
Fred H. Kanne, defendant above named, is now and
at all times since on or about August 1, 1933, has
been Collector of Internal Revenue of the United

States for the District of Hawaii and is a resident of said Honolulu; that plaintiff claims of defendant the sum of \$7,012.50 with interest thereon from October 6, 1936, and on \$1,476.13 with interest thereon from October 6, 1936, or a total of \$8,488.63 with interest from said date, said sum of \$8,488.63 representing income taxes and interest thereon erroneously and illegally exacted of plaintiff by defendant as hereinafter more fully appears.

II.

That on or about February 21, 1931, plaintiff loaned the sum of \$50,000.00 to Henry Waterhouse Trust Company, Limited, a Hawaiian corporation, and received the note of that corporation in the principal sum of \$50,000.00 as evidence of said debt; that at the time said loan was made plaintiff expected to receive full payment of the same; that in 1932, after full investigation, plaintiff determined that said debt of \$50,000.00 became worthless in 1932 and in said year charged off on its books the sum of \$50,000.00 on account of this indebtedness.

III.

That in the year 1932 the plaintiff contributed the sum of \$1,000.00 to the Hawaiian Bureau of Government Research; that the said contribution was made by the plaintiff with the expectation of deriving a direct financial benefit therefrom; that said sum was an ordinary and necessary expense of doing business.

IV.

That on or before March 15, 1933, plaintiff filed in the Office of the Collector of Internal Revenue of the United States for the District of Hawaii at Honolulu, Territory of Hawaii, its income tax return for the calendar year 1932; that in said return plaintiff deducted the sum of \$50,000.00 on account of said bad debt of Henry Waterhouse Trust Company, Limited, and also deducted the sum of \$1,000.00 as an ordinary and necessary business expense incurred and paid during the calendar year 1932.

V.

That a representative of the Commissioner of Internal Revenue made an examination of said return and proposed the disallowance of certain deductions, including the above-mentioned deductions claimed by the plaintiff and asserted that an additional income tax was due from plaintiff, to which proposed disallowance of deductions plaintiff protested within the time and in the manner as prescribed by law and the regulations.

VI.

That thereafter the Commissioner of Internal Revenue reviewed the matter and tentatively determined that plaintiff was subject to an additional income tax for the calendar year 1932; that plaintiff protested the grounds and conclusions of the Commissioner in that behalf within the time and in the manner as prescribed by law and the regulations.

VII.

That thereafter, by letter dated June 2, 1936, symbols:

IT:AR:E-7-8 GVR-90D addressed to plaintiff, the Commissioner of Internal Revenue stated that the determination of the income tax liability of plaintiff for the calendar year 1932 disclosed a deficiency of \$8,853.06; that in and by said letter said Commissioner disallowed as a deduction said bad debt deduction in the sum of \$50,000.00 and also disallowed as a deduction as an ordinary business expense the sum of \$1,000.00.

VIII.

That thereafter the amount of \$8,853.06 as and for the income tax for the calendar year 1932 was assessed against plaintiff and defendant above named demanded that plaintiff pay the same together with an additional amount of \$1,863.56 as interest thereon; that said tax and interest totaling \$10,716.57 was paid by plaintiff to defendant on October 6, 1936.

IX.

That of the tax so paid the sum of \$6,875.00 resulted from the disallowance as a deduction from its gross income as a bad debt of the said sum of \$50,000.00, and the sum of \$137.50 in taxes so paid resulted from the disallowance from its gross income of the sum of \$1,000.00 contributed by the plaintiff to the Hawaiian Bureau of Government Research.

X.

That on or about November 27, 1936, plaintiff filed with the Commissioner of Internal Revenue through the Collector of Internal Revenue, his agent for that purpose, a claim for refund covering the calendar year 1932 on Form 843 as prescribed by the Commissioner of Internal Revenue for the refund of said \$10,716.57, which claim, insofar as it pertained to said bad debt deduction of \$50,000.00 and the deduction of \$1,000.00 contributed to the Hawaiian Bureau of Government Research, was rejected by the Commissioner on November 14, 1940.

XI.

That no amount has been paid to said plaintiff of said two sums totaling \$8,488.63 claimed as taxes and interest thereon and so illegally assessed, demanded and collected by said defendant from said plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of \$8,488.63, with interest thereon from October 6, 1936.

Dated: Honolulu, T. H., this 21 day of July, 1942.

ALEXANDER & BALDWIN,
LIMITED,
Plaintiff.

By /s/ J. P. COOKE,
Its Vice-President.

Territory of Hawaii,
City and County of Honolulu—ss.

J. P. Cooke, being first duly sworn on oath deposes and says: That he is Vice-President of Alexander & Baldwin, Limited, and is authorized to make this verification for and on behalf of said Alexander & Baldwin, Limited; that he has read the foregoing Complaint, know the contents thereof and that the same is true.

/s/ J. P. COOKE.

Subscribed and sworn to before me this 21 day of July, 1942.

[Seal] /s/ MILDRED J. AULT,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires June 30, 1945.

[Endorsed]: Filed July 21, 1942.

[Title of District Court and Cause.]

ANSWER

The defendant in the above-entitled action, by his attorney, Angus M. Taylor, Jr., United States Attorney for the District of Hawaii, for his answer to the complaint herein:

I.

Admits each and every allegation in the paragraphs of the complaint marked and numbered IV, V, VI, VII, VIII, IX and X.

II.

Denies that the sum of \$8,488.63, or any other sum was erroneously and illegally exacted of plaintiff by defendant and admits each and every other allegation contained in paragraph marked and numbered I of the complaint.

III.

Admits that on or about February 21, 1931, plaintiff paid the sum of \$50,000 to Henry Waterhouse Trust Company, Limited, a Hawaiian corporation, and received the note of that corporation in the principal sum of \$50,000, but denies on information and belief each and every other allegation contained in paragraph marked and numbered II of the complaint.

IV.

Admits that in the year 1932, plaintiff contributed the sum of \$1,000 to the Hawaiian Bureau of Government Research, but denies each and every other allegation contained in paragraph marked and numbered III of the complaint.

V.

Admits that no sum has been paid plaintiff on account of plaintiff's claim for refund of income taxes paid by plaintiff for the calendar year 1932, but denies each and every other allegation contained in paragraph marked and numbered XI of the complaint.

Wherefore, defendant demands judgment against

the plaintiff dismissing the complaint herein, together with the costs and disbursements of this action.

Dated at Honolulu, T. H., this 17 day of October, 1942.

/s/ ANGUS M. TAYLOR, JR.

United States Attorney,
District of Hawaii.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 17, 1942.

[Title of District Court and Cause.]

MOTION TO AMEND COMPLAINT

Comes now Alexander & Baldwin, Limited, Plaintiff above named, by its attorneys Stanley, Vitousek, Pratt & Winn, and moves to amend the Complaint on file in the above-entitled cause and matter by adding at the end of Paragraph II of said Complaint the following language, to wit:

“That said sum was allowable as a deduction under the provision of Section 23(j) of the Revenue Act of 1932, or under the provision of Section 23(a) of said Act and Article 262 of Regulations 77,” so that Paragraph II as amended will read as follows:

“That on or about February 21, 1931, plaintiff loaned the sum of \$50,000.00 to Henry Waterhouse Trust Company, Limited, a Hawaiian corporation,

and received the note of that corporation in the principal sum of \$50,000.00 as evidence of said debt; that at the time said loan was made plaintiff expected to receive full payment of the same; that in 1932, after full investigation, plaintiff determined that said debt of \$50,000.00 became worthless in 1932 and in said year charged off on its books the sum of \$50,000.00 on account of this indebtedness; that said sum was allowable as a deduction under the provisions of Section 23(j) of the Revenue Act of 1932, or under the provisions of Section 23(a) of said Act and Article 262 of Regulations 77." This motion is based upon the record and files herein.

Dated: Honolulu, T. H., October 28, 1943.

ALEXANDER & BALDWIN,
LIMITED,
Plaintiff.

STANLEY, VITOUSEK,
PRATT & WINN,
Its Attorneys.

By /s/ MONTGOMERY E. WINN.

NOTICE OF HEARING ON MOTION

To: G. D. Crozier, United States Attorney, District of Hawaii:

Please take notice that within Motion will be heard at the hour of 10 o'clock a.m. on Tuesday, the 2nd day of November, 1943, before the Honorable Delbert E. Metzger in his Courtroom, Federal

Building, Honolulu, T. H., or as soon thereafter as the matter can be heard.

STANLEY, VITOUSEK,
PRATT & WINN,
Attorneys for Plaintiff.
By /s/ MONTGOMERY E. WINN.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 28, 1943.

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO AMEND
COMPLAINT

The motion to amend the Complaint filed by the plaintiff herein on October 28, 1943, is hereby allowed and the defendant is granted up to and including November 12, 1943, to plead to the Complaint as amended.

Dated: Honolulu, T. H., this 3rd day of November, 1943.

/s/ D. E. METZGER,
Judge of the Above-Entitled
Court.

[Endorsed]: Filed Nov. 3, 1943. .

[Title of District Court and Cause.]

MOTION TO SUBSTITUTE EXECUTRIX AS
DEFENDANT WITH CONSENT OF EXE-
CUTRIX

In the above-entitled cause, Plaintiff shows that Fred H. Kanne, the above-named defendant died on December 24, 1946, and that the estate of said defendant has passed into the control of Agnes M. Kanne, as Executrix under the Will of said Fred H. Kanne, Deceased, said Agnes M. Kanne having qualified and been confirmed as such Executrix on February 4, 1947, as shown by the records of the Probate Court for the City and County of Honolulu, Territory of Hawaii.

Wherefore, Plaintiff moves for an order substituting as Party Defendant herein Agnes M. Kanne, Executrix as aforesaid, and that otherwise the record in the case may stand as now made and the case proceed on the pleadings and records heretofore filed in said cause.

Dated: Honolulu, T. H., this 26th day of June, 1947.

VITOUSEK, PRATT & WINN,
Attorneys for Plaintiff.

It is agreed on behalf of the Estate of Fred H. Kanne, Deceased, that the above Motion may be granted and the substitution made as therein requested.

Dated: Honolulu, T. H., this 7th day of July, 1947.

RAY J. O'BRIEN,
United States Attorney,
District of Hawaii.

By /s/ EDWARD A TOWSE,
Attorney for Agnes M. Kanne, Executrix Under the
Will and of the Estate of Fred H. Kanne, Deceased.

Allowed: July 7, 1947.

/s/ J. FRANK M. McLAUGHLIN,
U. S. District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed July 7, 1947.

In the United States District Court
For the Territory of Hawaii

Civil No. 419

AMERICAN FACTORS, LIMITED, an Hawaiian
Corporation,

Plaintiff,

vs.

AGNES M. KANNE, Executrix Under the Will of
FRED H. KANNE, Deceased,

Defendant.

Civil No. 474

ALEXANDER & BALDWIN, LIMITED, an Ha-
waiian Corporation,

Plaintiff,

vs.

AGNES M. KANNE, Executrix Under the Will of
FRED H. KANNE, Deceased,

Defendant.

OPINION

These two cases for the recovery of income taxes paid to the United States Internal Revenue Collector, were both tried in the same hearing.

The claim of American Factors, Limited was for recovery of taxes paid on sums deducted as exemptions from its 1932 gross income tax return, which exemptions were denied by the Collector, as follows:

(1) In 1924 the corporation, together with 23 of its stockholders, was sued by J. C. Isenberg, et al., for \$10,000,000 damages, alleging fraud in connection with the transfer of the property of Hackfeld & Company, Limited, by the Alien Property Custodian to the taxpayer, a newly-formed corporation.

Twenty-two of the stockholders who were jointly sued with the taxpayer entered into an agreement among themselves to pay pro rata, on the basis of the stock for which they severally originally subscribed, the litigation costs of this suit. The taxpayer advanced from time to time such costs and expenses as they accrued and rendered accounts to this group of defendant stockholders. This litigation ran for several years and its total cost was \$568,607.76. Of this sum, the twenty-two contributing stockholding defendants paid in to the company the sum of \$396,812.50. There were 615 other original stockholders who were not made defendants who paid nothing into the litigation fund.

When the litigation came to an end in 1932 the taxpayer, being authorized at a meeting of its stockholders, refunded to the twenty-two stockholding defendants the sums they had contributed and deducted the same from its gross income tax return as an item of litigation expense, claiming it was legally liable to these contributors notwithstanding that they had made no claim or demand. This exemption claim is disallowed.

(2) In 1931 this taxpayer advanced the sum of

\$50,000 to H. Waterhouse Trust Company, Ltd., in the hope of aiding, with the help of others, the trust company from closing its doors due to its insolvent condition, which insolvency was known to the taxpayer. The following year the loan was written off the taxpayer's books as a total loss and deducted as a bad debt in its gross income tax return for that year. It claimed that the loan, while somewhat speculative, was made in good faith and supported by a promissory note. The note contained a proviso, as follows:

“Payment of principal and interest to be made only when, if and to the extent that there shall be funds available therefor as set forth in letter of this date from the payor to the payee.”

This deduction claim is disallowed.

(3) In its tax return for 1932 the taxpayer deducted as an ordinary and business expense the sum of \$4,063.33 paid by it as pensions to widows and children of deceased employees. The collector denied this deduction; the Court finds it justifiable and allowed it.

Alexander & Baldwin, Limited's Case.

The claim of Alexander & Baldwin, Limited, was for “bad debt” deduction which had been disallowed, and for a contribution which was also disallowed by the Collector.

In 1931 this taxpayer loaned \$50,000 to Henry Waterhouse Trust Company, Limited, for the pur-

poses of reorganization, for which it received a note in the same terms as that received by American Factors. The following year this taxpayer determined the debt to be worthless and wrote it off in its books as a loss, which loss it claimed in its following tax return. This claim was on the same basis as the American Factors' claim and was disallowed by the Court.

In 1932 this taxpayer contributed \$1,000 to the Hawaiian Bureau of Government Research, an organization maintained by contributions, which was created to gather statistical information and report on public affairs, legislation, social and economic which affected or might affect taxpayers, which contribution was disallowed by the collector.

At the close of arguments November 15, 1947, in the trial of the two cases the Court announced from the bench the following decisions:

“American Factors, Limited.

1. Hackfeld Litigation:

“My opinion is that the persons who subscribed to pay voluntarily for the defense of this inordinately costly litigation were impulsed and motivated entirely by keen personal interests and desires to defeat the demands of the plaintiffs in the case and clear themselves as defendants against claims that they had unlawfully conspired and acted in fraud and greed, as well as to escape a liability in damages by a possible judgment against them, and to protect their individual investments as shareholders

in the corporation, and that they were willing, and made a definite offer to pay, and did pay, to the extent of assessments made against them, without promise or original expectation of reimbursement at the time and times they made their contributions to the litigation fund.

“There is no evidence that the taxpayer promised or implied an intention to reimburse them at the time they subscribed the agreement or made their contributions, and no evidence that the taxpayer even considered the matter until the backbone of the litigation was broken in victory to all the defendants.

“There was no demand by them or test of their right to have contribution at the expense of other shareholders who were not named as parties defendant. The approval at a stockholders’ meeting and the act of the management in reimbursing these contributors from the company’s funds apparently flowed largely from feelings of gratitude arising from the successful outcome of the case in litigation and the liberal aid of the contributors and their steering committee which contributed many facilities and influences such as could not have been supplied by the management of American Factors acting alone.

“Certainly, the taxpayer had very substantial interests to protect, and was justified in every way, as a legitimate business outlay, in paying from its own funds during the taxable year of 1932, or earlier years had it chosen to do so, the costs of

litigation which imperiled its existence although others were involved in the same litigation as defendants and had much to lose, had the others not come forward with funds and volunteered to engineer and fight the battle at their own costs and had the taxpayer not accepted this offered payment plan and the volunteered services; either of the parties could have abandoned or modified this plan at any time, but so long as it was adhered to it was binding on both; but the taxpayer was not justified, in the realm of taxation laws and deductibles, to later deduct from taxable income the money it paid to reimburse voluntary contributors for money which they had paid out to clear themselves and this company of fraudulent charges made against them collectively and individually and to protect their property interests, no matter if victory in such defense brought great benefit to the taxpayer as well as to the other named defendants.

“As between share owners, of course, within ultra vires limitations, they were empowered to make any desired distribution of the company's funds so long as none was injured.

“The taxpayer is entitled to an expense-deduction in its 1932 tax return of the sum of all Hackfeld litigation paid by it prior to the end of 1932, less the amount paid in to it for that purpose by the other defendants. The claim for tax refund on sums reimbursed to voluntary contributors to this litigation fund is denied.

2. "As to the Waterhouse Trust Company contribution of \$50,000, this was just that—a contribution. The note given in acknowledgment of the contribution was contingent as to value upon such conditions as to give it no negotiable value from the time it was made. It could not be dealt with as a debt. The considerations in payment for the contribution flowed to the payee of the note at the time it was made—the protection of the commercial community, sympathy toward Waterhouse Company clients who could ill afford to lose, and other commendable desires and motives of helpfulness and security, but there was no attempt to show that either American Factors or Alexander & Baldwin would have suffered any material loss had they not attempted to keep the Waterhouse Trust Company a going concern.

"I find that no part of this contribution was deductible as a bad debt or loss in 1932 or at any other time, since it never was a collectible debt, but was from the beginning in the nature of a contingent or speculative gift, to which status it speedily resolved itself with certainty, although it may have accomplished in part the purpose for which it was intended, that is, prolonged the life of Waterhouse Trust Company. Claim for tax refund on this outgoing sum of \$50,000 is denied.

3. "As to the items of contributions or pensions to dependents of deceased employees, I am fully convinced from the evidence that this was a usual and, within ordinary business discretion, a neces-

sary and proper business practice. It is well recognized that it would reasonably tend to the gratification, good will and loyalty of employees in general and thus be a benefit to business operations, particularly in a business under many department heads and of ramified operations.

“I find these moderate and reasonable items to be proper income tax deductions.

“Alexander & Baldwin, Limited.

1. “My opinion and finding with respect to the Waterhouse Trust contribution in the American Factors case is, in all pertinent respects, applicable to the refund claim of this litigant and the said claim is denied.

2. “As to the contribution to maintain the Hawaiian Bureau of Government Research, I find this to be an ordinary and necessary expense to a firm carrying on the business and business trusts and responsibilities such as Alexander & Baldwin carry.

“If more extensive findings and conclusions are desired, the prevailing parties may prepare and submit such proposals to me, after tendering copies to opposing counsel.”

/s/ DELBERT E. METZGER,

Judge.

[Endorsed]: Filed Nov. 18, 1948.

In the United States District Court
For the Territory of Hawaii

Civil No. 474

ALEXANDER & BALDWIN, LIMITED, an Hawaiian Corporation,

Plaintiff,

vs.

AGNES M. KANNE, Executrix Under the Will
and of the Estate of Fred H. Kanne, Collector
of Internal Revenue of the United States for
the District of Hawaii,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

Upon the record, testimony and evidence adduced in this case, the Court makes the following findings of fact:

I.

That Alexander & Baldwin, Limited, the Plaintiff herein, is a corporation, incorporated under the laws of the Territory of Hawaii, having its principal office in Honolulu, City and County of Honolulu, Territory of Hawaii.

II.

That Fred H. Kanne was Collector of Internal Revenue of the United States of America for the District of Hawaii and a resident of Honolulu at

all times from on or about August 1, 1933, until his death on December 24, 1946; that Agnes M. Kanne, the duly qualified and appointed Executrix of the Will and of the Estate of Fred H. Kanne, deceased, was substituted as defendant in this cause by order of this Court on March 6, 1947.

III.

That Henry Waterhouse Trust Company, Limited, was incorporated under the laws of the Territory of Hawaii on November 26, 1902, to engage in the business usual and permitted to a trust company under the laws of the Territory. In addition to engaging in the usual fiduciary business common to all trust companies it operated a plantation agency department, a real estate department, a stock and bond brokerage department, and an insurance department, and at times invested in stocks and bonds to a limited extent on its own account, these various activities being permissible under the Hawaiian statutes and its Articles of Incorporation.

IV.

That in the middle of October, 1930, the Henry Waterhouse Trust Company increased its capital stock from \$200,000.00 to \$400,000.00, consisting of four thousand shares of a par value of \$100.00 each. The new shares were all taken by the old stockholders who paid for them in cash at par. In November of that year, the effects of the general business depression began to be felt in the Territory of Hawaii, and as a large part of the Waterhouse

Company assets consisted of real estate and mortgages, its secretary became apprehensive that if many calls were made on its demand accounts the company's financial condition would not be sufficiently liquid to meet its cash requirements. He discussed the situation with the treasurer and auditor of the Company and informed the management of Bishop Trust Company, Limited, that a sale of the Waterhouse stock might be arranged, suggesting a price of \$100.00 each or more for the shares, the Bishop Trust Company taking the suggestion under consideration pending an examination of the affairs of the Waterhouse Company.

V.

In 1931 the Waterhouse Company was conducting business as usual but was encountering some financial difficulties; economic conditions were not clear, and, after an investigation, the executives of the Bishop Trust Company, Limited, advised the Waterhouse Company shareholders that it would not pay cash for their shares as had been previously suggested. Mr. A. W. T. Bottomley, President of American Factors, Limited, and of the Bishop First National Bank of Honolulu, and vice-president of the Bishop Trust Company, Limited, called a conference of the heads of the principal Hawaiian sugar agencies, the president of the Bank of Hawaii, Limited, the president of the Hawaiian Trust Company, Limited, and two members of the finance committee of the Bishop Trust Company, Limited, to present to them the financial condition of the

Waterhouse Company and discuss the feasibility of making some plan to prevent the Waterhouse Company from being forced into liquidation.

VI.

That on Saturday, February 14, 1931, Mr. W. F. Frear, President of the Bishop Trust Company, Limited, at a meeting of the Board of Directors of that company, made a statement which was recorded on the minutes as follows:

“This is a special meeting called to consider a proposition to take over the Henry Waterhouse Trust Co., Ltd. At first it was a proposition to purchase the stock of that company, somewhat as we purchased the stock of the Pacific Trust Co., but as a result of investigation, it changed largely to a salvage proposition.

“The plan now is for our Company to acquire all the stock of the Waterhouse Trust Co. without cost; for Mr. and Mrs. R. W. Shingle and Mr. A. N. Campbell, in settlement of their indebtedness to the Company, to pay into it \$535,000.00 and to convey to its order their respective 18% and 10% undivided interests in certain land, fish ponds and fishery at Kalihi, the same to be sold for \$87,000.00 and the proceeds, with \$13,000 additional contributed by the Bishop Trust Co., to make up an even \$100,000.00, to be paid into the Waterhouse Trust Co., making in all \$635,000.00 thus paid in. In addition, a number of corporations and individuals are to contribute various sums aggregating \$400,000.00, thus making altogether \$1,035,000.00 of cash to be paid into the

Waterhouse Trust Co. The Bishop Trust Co. is to pay such amount, if any, as may be required in addition to enable the Waterhouse Trust Company to meet its liabilities, but it is hoped that no such contribution will be required. That, however, remains to be seen.

“The Bishop Trust Co. is to take over, without other cost, the business of the Waterhouse Trust Co., other than the assets and liabilities, and to operate such business at its own expense and for its own benefit. This will include the trusts, executorships, agencies, insurance, safe deposit business, etc., with the necessary furniture, equipment and supplies therefor. It is hoped also that the Bishop Trust Co. will profit through making new contacts. The stock and bond and real estate departments will probably be discontinued.

“The assets and liabilities of the Waterhouse Trust Co. are to be gradually liquidated by applying the assets to the liabilities, together with the expenses of liquidation, including \$1,000.00 a month to be paid to the Bishop Trust Co. for supervision.

“In final settlement, if there is an excess of assets over liabilities, it is to be applied, first, to the reimbursement of the amount, if any, that may be contributed by the Bishop Trust Co. in addition to the \$1,035,000.00, and, secondly, pro rata to the contributors of the \$400,000.00 with simple interest at 4%, and, thirdly, the balance, if any, to go to the Bishop Trust Co.

“There are three objects: First, to prevent the

failure of such a company as the Waterhouse Trust Co., with the consequent general disastrous effects; secondly, to prevent loss on the part of many who have entrusted their money to the Company for investment and who can ill afford the loss; and, thirdly, to enable the Bishop Trust Co. to acquire new business. These three objects naturally appeal with different degrees of force to different groups of contributors."

The plan, as outlined above, was approved by the Board of Directors of the Bishop Trust Company, Limited, at that meeting; and the transactions mentioned in the second paragraph of Mr. Frear's statement were duly performed within a few days after February 14, 1931.

VII.

Prior to the consummation of the transactions hereinbefore mentioned, the following individuals and corporations promised to pay to the Waterhouse Company, upon consummation of the proposed plan, the sums of money set opposite their names, to wit:

Name of Contributor	Amount Paid
The Bishop Company, Limited.....	\$100,000
American Factors, Limited.....	50,000
Alexander & Baldwin, Limited.....	50,000
Castle & Cooke, Limited.....	50,000
W. R. Castle.....	50,000
Beatrice Castle Newcomb.....	50,000
Bank of Hawaii.....	25,000
Hawaiian Trust Company, Limited.....	25,000
Total.....	<hr/> \$400,000

VIII.

At a meeting of the Board of Directors of Alexander & Baldwin, Limited, held on February 25, 1931, payment of \$50,000.00 to the Waterhouse Company pursuant to the aforesaid plan was duly authorized.

IX.

That the plan of reorganization of the Waterhouse Company was carried out as outlined above and plaintiff and the individuals and other corporations whose names appear above in the preceding paragraph, number VII of these findings, actually paid into the Waterhouse Company the amounts of money stated opposite their respective names, upon the provisions concerning the repayment thereof as are more particularly stated in the letters from the Henry Waterhouse Trust Company to plaintiff dated February 21, 1931, and February 24, 1931, which read respectively as follows:

“Honolulu, Hawaii,
February 21, 1931.

Alexander & Baldwin, Ltd.
Honolulu, T. H.

Gentlemen:

We outline as follows the plan in regard to the Henry Waterhouse Trust Company, Limited.

1. The Bishop Trust Co., Ltd., has acquired all of the capital stock of the Henry Waterhouse Trust Co., Ltd.

2. In settlement of their indebtedness to the Henry Waterhouse Trust Co., Ltd., R. W. Shingle and wife have paid into that Company \$435,000.00; A. N. Campbell has paid into it \$100,000.00; and R. W. Shingle and A. N. Campbell are to convey to the company or to its order their respective 18% and 10% undivided interests in certain land, fish ponds and fishery at and near Mokauea, Kalihikai, Honolulu, the same to be sold and the proceeds thereof, plus such additional sum (to be contributed by Bishop Trust Co., Ltd.) as shall be necessary to make a total of \$100,000.00, to be paid to the Henry Waterhouse Trust Co., Ltd.

3. The following corporations and individuals have contributed or are to contribute the following sums to the Henry Waterhouse Trust Co., Ltd.: The Bishop Co., Ltd., \$100,000.00; American Factors, Ltd., Alexander & Baldwin, Ltd., Castle & Cooke, Ltd., W. R. Castle and Beatrice Castle Newcomb each \$50,000.00; and the Bank of Hawaii, Ltd., and the Hawaiian Trust Co., Ltd., each \$25,000.00. For the amounts of these contributions notes of the Henry Waterhouse Trust Co., Ltd., of even date herewith, bearing simple interest at the rate of four per cent (4%) per annum, have been or will be given to the respective contributors, payable, however, only as provided in paragraph 8.

4. The Bishop Trust Co., Ltd., will ultimately contribute such amount, if any, over the above sums aggregating \$1,035,000.00, as may be required to liquidate the liabilities (other than the sums of notes

mentioned in paragraph 3) of the Henry Waterhouse Trust Co., Ltd.

5. The Bishop Trust Co., Ltd., will take over, own and operate at its own expense and for its own benefit, in its own name or in the name of the Henry Waterhouse Trust Co., Ltd., the business (with such of the furniture, equipment and supplies as shall be required therefor) other than the assets subject to the liabilities (referred to in paragraph 6) of the Henry Waterhouse Trust Co., Ltd. Any of the business so taken over by the Bishop Trust Co., Ltd., may by it be discontinued, sold or merged with its other business.

6. The assets and liabilities of the Henry Waterhouse Trust Co., Ltd., will gradually be liquidated by applying the assets or their proceeds and the income therefrom to (a) the expenses involved in such liquidation (such as salaries, taxes, rent, insurance, legal, auditing, bank examiner, postage, cables, books, stationery, etc.); (b) \$1,000.00 per month to the Bishop Trust Co., Ltd., for overhead or supervision; (c) interest payable; (d) indebtedness; and (e) other liabilities, if any. The assets shall be deemed to include cash on hand, bank deposits, notes and accounts receivable, stocks and bonds, stock exchange seat, and furniture, equipment and supplies (except as otherwise provided in paragraph 5) owned by the Henry Waterhouse Trust Co., Ltd., at the close of business on February 14, 1931, and the sums since paid or to be paid in as set forth in paragraphs 2,

3, and 4; the liabilities shall be deemed to include all liabilities of the company as of that date, and liabilities subsequently incurred in connection with the liquidation; the expenses of operation shall be deemed to include, besides other items, the cost of investigation by accountants preliminary to the reorganization, the cost of an audit of the Company's affairs and of the set-up of the accounting system at the outset by accountants, a proper pro rata of salaries of officers and employees of the Bishop Trust Co., Ltd., transferred temporarily for the reorganization, rehabilitation and readjustment of the affairs of the Henry Waterhouse Trust Co., Ltd., at the outset and a proper pro rata of the salaries of officers and employees of the Henry Waterhouse Trust Co., Ltd., so long as their services are rendered in part in connection with the liquidation and in part in connection with the business taken over by the Bishop Trust Co., Ltd. It is proposed for convenience, efficiency and economy, to transfer the various branches of the business to the Bishop Trust Building as soon as the circumstances warrant.

7. In final settlement, the excess, if any, of the assets as defined in paragraph 6 or their proceeds and the income therefrom over the payments specified in paragraph 6 is to be applied, so far as it will go, in the following order of priority: First, to reimbursing the Bishop Trust Co., Ltd., for such amount, if any, without interest as may be contributed by it under paragraph 4 above; secondly, to paying pro rata, principal and interest, the notes

mentioned in paragraph 3, and thirdly, the balance, if any, of such excess to be paid to the Bishop Trust Co., Ltd.

8. The Henry Waterhouse Trust Co., Ltd., may from time to time borrow money (from the Bishop Trust Co., Ltd., and/or others) to meet its requirements in connection with the liquidation and repay the same with interest. The notes (principal and interest) mentioned in paragraph 3 shall be payable only if and to the extent that there shall be an excess of assets available therefor in final settlement after the payments specified in paragraph 6 and the reimbursement of the Bishop Trust Co., Ltd., provided for in subdivision First of paragraph 7. The books of the Henry Waterhouse Trust Co., Ltd., shall be closed at the end of each calendar half year and a financial statement for such half year shall thereupon be furnished to each of the contributors named in paragraph 3. Such contributors shall have the right to inspect the books of the Company at all reasonable times.

Very truly yours,

HENRY WATERHOUSE
TRUST COMPANY,
LIMITED,

By W. F. FREAR,

Its President,

By W. A. WHITE,

Its Treasurer."

“Honolulu, Hawaii,
February 24, 1931.

Alexander & Baldwin, Ltd.
Honolulu, T. H.

Gentlemen:

Supplementing our letter of the 21st instant in regard to the Henry Waterhouse Trust Co., Ltd.:

1. There is a Finance Committee, consisting at present of M. B. Henshaw, J. L. Cockburn and E. W. Sutton, for frequent consultation on numerous matters, including many that naturally it would be impracticable to bring before the Advisory Committee referred to in the next paragraph.

2. There will be an Advisory Committee for passing upon various matters of importance, particularly those tending to affect the amount of reimbursement, if any, ultimately to be made to the contributors mentioned in paragraph 3 of the letter above referred to—such matters as sales of stocks and bonds owned by the Company, compromises of claims by or against the Company, etc. This Committee will consist for the present of A. W. T. Bottomley, C. H. Cooke and A. L. Castle, with alternates as follows to act in their several respective places when they cannot act: H. A. Walker and S. M. Lowrey, alternates to A. W. T. Bottomley; R. McCorriston and E. W. Carden, alternates to

C. H. Cooke; F. C. Atherton and A. G. Budge,
alternates to A. L. Castle.

Very truly yours,
HENRY WATERHOUSE
TRUST COMPANY,
LIMITED,
By W. F. FREAR,
Its President,
By W. A. WHITE,
Its Treasurer."

Plaintiff received from the Waterhouse Company
the following note, being the note referred to in
the aforesaid letter dated February 21, 1931:

"(\$50,000.00)

February 21, 1931.

For value received, the Henry Waterhouse Trust
Company, Limited, promises to pay to Alexander &
Baldwin, Limited, Fifty Thousand Dollars (\$50,-
000.00), with interest thereon from date at the rate
of four per cent (4%) per annum, payment of
principal and interest to be made only when, if and
to the extent that there shall be funds available
therefor as set forth in letter of this date from the
payor to the payee.

HENRY WATERHOUSE
TRUST COMPANY,
LIMITED,
By W. F. FREAR,
Its President,
By W. A. WHITE,
Its Treasurer."

Plaintiff was not a stockholder of the Waterhouse Company.

X.

That as of February 14, 1931, the \$400,000.00 par value of capital stock of the Waterhouse Company was transferred to the Bishop Trust Company, Limited, without any cash payment therefor, and the cash balances, properties, stocks and bonds, accounts, books and records of the Waterhouse Company came under the management and control of the Bishop Trust Company, Limited, as sole stockholder. New officers and directors were elected, a finance committee, comprised of officers and directors, and an advisory committee comprised of representatives of the \$400,000.00 noteholders, were appointed, and work was immediately commenced on the liquidation of the Waterhouse Company.

XI.

That an audit report dated March 31, 1931, of Tennent & Company, certified public accountants of Honolulu, T. H., disclosed the book value of assets of the Waterhouse Company, as of February 14, 1931, to be in the amount of \$4,820,090.92, and the liabilities, exclusive of capital and surplus, to be in the amount of \$4,149,437.06. It was stated in the audit report that the principal purpose of the audit was to establish as accurately as possible the total assets and liabilities as of February 14, 1931, the date control of the company passed to the Bishop Trust Company, and the audit report contained the following statement:

“The Contingent Reserve (for losses) of \$680,-803.15 and the Special Contingent Reserve of \$400,-000.00 referred to above, are considered adequate to cover probable losses in the realization of the assets and liquidation of liabilities.”

The audit report also contained a statement expressing that the Special Contingent Reserve for Losses will remain intact until actual losses written off have fully exhausted that reserve and that additional losses as determined will then be applied pro rata against the Special Contingent Reserve contributions, to wit, the \$400,000.00, representing the amounts paid in by the special noteholders.

In further explanation of Exhibit “A” referred to in paragraph V of stipulation I, particularly with respect to the item of estimated losses amounting to \$1,080,803.15 shown thereon, the auditor who prepared the audit report containing Exhibit “A” hereinbefore described testified as follows:

“A Exhibit ‘A,’ as I see it here, looks to me like it is an exact copy of what was Exhibit ‘A’ in my report, as Government counsel said, so that the figures are identically the same. Now, then, that million and eighty thousand dollars, as it is shown there, is somewhat of a balance figure to make up the million eight hundred fourteen thousand dollars which is the difference of it, or the million and eighty is the difference between the million and eight hundred fourteen thousand and the \$733,-000 representing the Shingle and Campbell account.

Now, then, the \$1,814,000, according to my work papers, is made up first of the \$1,548,000 about which I just testified, plus approximately \$260,000 more that was added in there to make these figures balance out for two reasons: One being that between the January 31st scheduled preparation and the February 14, 1931, Shingle and Campbell had paid in the \$635,000 for one thing; also in making up the balance sheet of February 14, we had to take into account that there was an operating—that the company was operating and had gone on from January 1st to February 14th, and during that period the books reflected a loss of \$10,149. Now, then, going back to the million and eighty thousand dollars, that is the figure which when the \$400,000 paid in by the noteholders—after that would be paid in and added to the \$680,000 that shows as the net worth on the balance sheet, would make up the million eighty thousand dollars.

* * *

“Q. Mr. Greaney, you mentioned a figure of \$260,000 being added to the estimated losses. Will you explain what that 260,000 odd represented?

“A. The \$260,000 represented a cushion in effect and had the effect of being a cushion to take care of any losses over and above the amount that was put in the loss column on the schedule that was prepared, covering the individual receivables that were on the books.

“Q. And that was done for what purpose?

“A. That was done because by the time we got around to preparing the final report and putting the

figures together, the Bishop Trust Company had agreed to take over the operation of the Waterhouse Trust Company and had changed its position somewhat from a position it had taken somewhat shortly prior to that time, that they would pay something for the stock. And as it finally turned out they refused to pay anything for the stock so that the reserve for contingencies was made to balance up so that it would appear proper to pay nothing for the stock."

XII.

That the balance sheets of the Henry Waterhouse Trust Company as at February 14, 1931, after the aforesaid reorganization; and at December 31, 1931, and at December 31, 1932, were as follows:

Henry Waterhouse Trust Company Balance Sheets

Assets:	As at Feb. 14, 1931	As at Dec. 31, 1931	As at Dec. 31, 1932
	After Reorganization		
Cash	\$1,044,547.87	\$ 29,700.69	\$ 14,639.50
Investments	605,181.47	-----	-----
Receivables	77,184.34	-----	15,214.69
Trust and agency accounts (Shingle & Campbell).....	-----	-----	-----
Other trust & agency accts.	1,439,567.36	383,460.67	299,565.32
Loans	1,978,492.73	2,247,844.14	1,624,740.12
Other Assets	75,117.15	17,434.16	17,326.66
Stocks and bonds.....	-----	251,220.65	267,122.42
Stocks in subsidiaries	-----	303,704.16	303,704.16
Advances to subsidiaries	-----	324,382.60	314,787.92
Real estate for sale.....	-----	169,700.00	233,273.02
Expense in suspense.....	-----	-----	17,500.00
Profit and loss—Special.....	400,000.00	400,000.00	400,000.00
	<u>\$5,620,090.92</u>	<u>\$4,127,447.07</u>	<u>\$3,507,873.81</u>
Liabilities:			
Overdrafts balances due			
Brokers, etc.	\$ 457,545.90	\$ 79,578.59	\$ 46,648.10
Notes payable	223,100.00	376,557.98	674,190.88
Trust & Agency accounts....	2,978,515.16	1,834,540.86	1,068,907.28
Loans pledged to clients.....	490,276.00	198,000.00	132,128.00
Merchandise accounts	-----	1,252.11	-----
Notes payable—affiliated Co.	-----	550,000.00	602,500.00
Income in suspense.....	-----	-----	2,417.13
P. & L. Acct.—operating deficit 2/14/31.....	(10,149.29)	(10,149.29)	(10,149.29)
P. & L. Acct.— operating deficit subsequent to 2/14/31.....	-----	(58,526.56)	(80,062.56)
Surplus & surplus reserves..	-----	-----	-----
Reserve for losses.....	680,803.15	356,193.38	271,294.27
Contingent reserve— underwriters	400,000.00	400,000.00	400,000.00
Capital stock	400,000.00	400,000.00	400,000.00
	<u>\$5,620,090.92</u>	<u>\$4,127,447.07</u>	<u>\$3,507,873.81</u>

At December 31, 1931, Henry Waterhouse Trust Company had sustained on liquidation actual losses amounting to \$324,913.77, and at December 31, 1932, it had sustained on liquidation cumulative actual losses totaling \$410,345.80, so that at the end of 1932 there was still a balance of \$190,457.35 remaining in the Reserve for Losses, against which future losses must be paid before there would be any impairment for the repayment of the \$400,000.00 contributions to the special noteholders.

XIII.

The note given by the Henry Waterhouse Trust Company to Alexander & Baldwin, Limited, in acknowledgement of the contribution of \$50,000 made by that company in 1931 to the Henry Waterhouse Trust Company was contingent as to payment, being subject to such conditions as to render it non-negotiable at the time it was made and at all times thereafter, and without negotiable value from the time it was made. The considerations in payment for the contribution flowed to the payee at the time it was made—the protection of the commercial community, sympathy toward the Henry Waterhouse Trust Company clients who could ill afford to lose, and other commendable desires and motives of helpfulness and security, but there was no attempt to show and there is no evidence of record which would support a finding of fact that Alexander & Baldwin, Limited, would have suffered any loss had it not attempted to keep the Henry Waterhouse Trust Company a going concern.

XIV.

Plaintiff's books of account were kept on the cash basis of accounting, and during the calendar years 1924 to 1932, inclusive, they were so kept, and its federal income tax returns for those years were made on that basis of accounting.

XV.

Plaintiff charged off on its books of account in the calendar year 1931, \$25,000.00 of the face amount of the Henry Waterhouse Trust Company note of \$50,000.00, but did not take a deduction therefor in its income tax return for the taxable year 1931. Plaintiff charged off the \$25,000.00, being the balance of the face amount of the Henry Waterhouse note, on its books of account in the calendar year 1932, and claimed as deduction the entire amount of \$50,000.00 as a bad debt in computing its taxable net income for the taxable year 1932. The Commissioner of Internal Revenue disallowed the deduction of the \$50,000.00 paid by plaintiff to the Waterhouse Trust Company in 1931, as a bad debt deduction in computing its taxable net income for the taxable year 1932.

XVI.

In the year 1932 the plaintiff contributed to the Hawaii Bureau of Governmental Research \$1,000. This Bureau was organized under the laws of the Territory of Hawaii in 1928 by representatives of local business firms, and membership was available

to any taxpayer of Hawaii upon contribution of not less than \$10 a year.

In operation, the Bureau of Governmental Research offers, and during the entire calendar year 1932 it also offered, gratuitous advice and assistance to the Governor of the Territory and governmental bureaus and agencies, usually at their request; studies and devises plans designed to effect efficiency and economy in governmental administration; analyzes proposed legislation and makes recommendations thereon to the territorial legislature; and supplies interested organizations, such as churches, chambers of commerce, and groups of citizens, with information and counsel on proposed legislative measures. The bureau has no political aspects. Typical of the bureau's activities are a survey and suggested revision of the administrative organization of Maui County made in 1933 and an analysis of income tax returns made in 1934 at the request of an advisory committee on taxation to determine the ability to pay of various taxpayers.

The bureau is supported entirely by its members' voluntary contributions which range from \$10 to \$10,000 a year. An attempt is made to interest all of the people of the Territory of Hawaii in the bureau and make it a citizens agency. Contributions to the bureau are made by corporations, individuals, and chambers of commerce. Definite amounts are requested of the several members, apportioned on the basis of taxes paid, but each member is free to give what he wishes, and some

members contribute at intervals longer than a year, or sporadically. About 75 per cent of the bureau's receipts come from corporations.

In its federal income tax return for the calendar year 1932 the plaintiff deducted the amount of the above payment as an ordinary and necessary business expense, and the Commissioner of Internal Revenue after investigation determined that the amount was not allowable as a deduction for the reasons stated in his 90-day deficiency letter dated June 2, 1936.

XVII.

That on or before March 15, 1933, plaintiff filed in the office of the Collector of Internal Revenue for the District of Hawaii its said income tax return for the calendar year 1932; that thereafter the Commissioner of Internal Revenue, after an examination of said return, made certain adjustments and assessed an additional income tax against plaintiff for that taxable year in the amount of \$8,853.06, which plaintiff paid on October 6, 1936, to Fred H. Kanne, Collector of Internal Revenue for the District of Hawaii, together with interest thereon in the amount of \$1,863.51, making a total payment of tax and interest in the amount of \$10,716.57; that of the tax so paid, \$6,875.00 thereof resulted from the disallowance of the \$50,000.00 contribution made by plaintiff to the Waterhouse Company as a bad debt, and \$137.50 of said additional tax so paid resulted from the disallowance of the \$1,000.00 contributed to the Hawaiian Bureau of Govern-

mental Research, taken as a deduction in its tax return for that year.

XVIII.

That on November 27, 1936, plaintiff filed with the Collector of Internal Revenue for the District of Hawaii a claim for refund of \$10,716.57, representing the additional tax of \$8,853.06 and interest thereon in the amount of \$1,863.51 paid by plaintiff for the taxable year 1932; that under date of November 14, 1940, plaintiff was notified by registered letter that the Commissioner of Internal Revenue had determined upon consideration of its claim for refund that it had overassessed income tax for the taxable year 1932 in the amount of \$1,313.95 and interest in the amount of \$276.57, and that its claim for refund had been disallowed to the extent of the difference between the above amounts and the amounts claimed; that by Treasury check dated October 23, 1940, there was refunded to plaintiff the sum of \$1,971.87, representing an overpayment of income tax for the taxable year 1932 in the amount of \$1,313.95 and an overpayment of interest in the amount of \$276.57, and interest in the amount of \$381.35 on the sum of \$1,590.52 representing the overpayment of tax and interest; and no amount of income tax for the taxable year 1932, and interest thereon other than the amounts above stated has been refunded to the plaintiff herein.

Conclusions of Law

Upon the foregoing facts, testimony and evidence adduced in this case, the Court concludes as a matter of law as follows:

I.

The payment of \$50,000 made to the Henry Waterhouse Trust Company in 1931 by plaintiff was just a contribution. The note given by the Henry Waterhouse Trust Company in 1931 to plaintiff in acknowledgment of that contribution was contingent as to payment, being subject to such conditions as to render it non-negotiable and without any negotiable value at the time it was made and at all times thereafter, and therefore it could not be dealt with as a debt, and the Commissioner of Internal Revenue did not err in disallowing plaintiff a deduction therefor as a bad debt in computing plaintiff's taxable net income for the calendar year 1932.

II.

No part of this contribution of \$50,000 was deductible as a bad debt, ascertained to be worthless and charged off within the taxable year 1932 within the terms of Section 23(j) of the Revenue Act of 1932 or as a loss sustained during that taxable year not compensated for by insurance or otherwise, within the terms of Section 23(f) of the Revenue Act of 1932, and accordingly no part of said contribution was properly allowable as a deduction in computing plaintiff's taxable net income for the calendar year 1932.

III.

The aforesaid contribution by plaintiff in 1932 to the Hawaii Bureau of Governmental Research was usual and within ordinary business discretion a necessary and proper business practice. This contribution was an ordinary and necessary expense paid or incurred in carrying on plaintiff's business during the taxable year 1932, within the terms of Section 23(a) of the Revenue Act of 1932, and constituted a proper deduction in computing its taxable net income for that year. The Commissioner of Internal Revenue erred in disallowing this contribution as a deduction in computing plaintiff's taxable net income for the calendar year 1932.

Entry of judgment in conformity with the foregoing findings of fact and conclusions of law is hereby directed.

Dated at Honolulu, T. H., this 6th day of December, 1949.

/s/ D. E. METZGER,
Judge, United States
District Court.

[Endorsed]: Filed Dec. 7, 1949.

In the United States District Court for the
Territory of Hawaii

Civil No. 474

ALEXANDER & BALDWIN, a Hawaiian Cor-
poration,

Plaintiff.

vs.

AGNES M. KANNE, Executrix Under the Will
and of the Estate of Fred H. Kanne, Collector
of Internal Revenue of the United States for
the District of Hawaii,

Defendant.

JUDGMENT

Be it remembered that on November 12, 1947,
there came on for trial the above-entitled and num-
bered action wherein this case having been submitted
to the Court without a jury upon the pleadings, oral
and documentary evidence, and a stipulation of
facts, and argument of counsel, and the Court being
sufficiently advised, and having made and filed its
opinion and findings of fact and conclusions of law
herein, now therefore, in pursuance thereto,

The Court having found that the plaintiff paid
income taxes and interest assessed thereon for the
taxable year 1932 as follows:

Dates of Payment	Tax	Interest
October 6, 1936.....	\$8,853.06	\$1,863.51
Less: Refund of overpayment made by Treasury check dated October 23, 1940	1,313.95	276.57
Net amounts paid	7,539.11	1,586.94
Adjusted liability	7,401.61	1,558.00
Overpayments	\$ 137.50	\$ 28.94

It is hereby ordered, adjudged, and decreed that the plaintiff have and recover from Agnes M. Kanne, Executrix under the will and of the estate of Fred H. Kanne, deceased, the defendant, formerly Collector of Internal Revenue for the District of Hawaii, the sum of \$166.44, representing an overpayment of federal income tax and interest for the taxable year 1932, together with interest thereon as provided by law from October 6, 1936, together with costs of this suit in the amount of \$43.37.

To the foregoing judgment the defendant in open court excepted.

Entered this 6th day of December, 1949.

/s/ D. E. METZGER,

United States District Judge.

Approved as to Form:

RAY J. O'BRIEN,

United States Attorney.

By /s/ HOWARD K. HODDISH,

Assistant United States
Attorney.

[Endorsed]: Filed and entered Dec. 7, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF PROBABLE CAUSE

This cause having come on for hearing before the Court without a jury, the case having been submitted upon the pleadings, oral and documentary evidence, and a stipulation of facts, and arguments as to the law, and the defendant having appeared herein by the United States Attorney for the District of Hawaii, and the Court having found partially in favor of the plaintiff, and judgment having been entered in favor of the plaintiff and against the defendant in the principal sum of \$166.44 representing an overpayment of federal income tax and interest for the taxable year 1932, together with interest thereon as provided by law from the date of payment, and costs of suit in the amount of \$43.37.

Now therefore, pursuant to Section 989 of the Revised Statutes of the United States, the Court hereby certifies there was probable and reasonable cause for the act of the defendant, Fred H. Kanne, Collector of Internal Revenue for the District of Hawaii, since deceased, and that he acted under the directions of the Secretary of the Treasury or other proper officials of the Government in demanding and collecting from plaintiff the internal revenue tax, for the refund of which the judgment in this case is rendered.

/s/ D. E. METZGER,

United States District Judge.

[Endorsed]: Filed Dec. 7, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Alexander & Baldwin, Limited, a Hawaiian corporation, plaintiff above named, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from so much of the Final Judgment entered in this action on the 6th day of December, 1949, as denies to said plaintiff the recovery of the amount of \$8,351.13, with interest and costs, as prayed for in the complaint filed herein.

Dated: Honolulu, T. H., this 2nd day of February, 1950.

ALEXANDER & BALDWIN,
LIMITED By
PRATT, TAVARES &
CASSIDY,
Its Attorneys,
By /s/ V. O. BORTZ.

[Endorsed]: Filed Feb. 2, 1950.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Agnes M. Kanne, Executrix under the Will and of the Estate of Fred H. Kanne, Collector of Internal Revenue of the United States for the District of Hawaii, appellee in the above-entitled cause,

designates the following portion of the record in addition to those designated, to be contained in the record on appeal in this action:

1. Complete Docket Entries.

Dated: Honolulu, T. H., this tenth day of March, 1950.

RAY J. O'BRIEN,
United States Attorney, District of Hawaii, at-
torney for Appellee,

By /s/ WINSTON C. INGMAN,
Assistant U. S. Attorney,
District of Hawaii.

Receipt of Copy Acknowledged.

[Endorsed]: Filed Mar. 10, 1950.

[Title of District Court and Cause.]

DOCKET ENTRIES

1942

July 21—Filing Complaint.

Issuing Summons.

Making 3 certified copies for service.

July 22—Filing Marshal's returns to Summons
(executed).

Sept. 9—Filing Stipulation.

Filing Marshal's returns to Summons
(additional).

Oct. 17—Filing Answer.

1943

Oct. 28—Filing Motion to Amend Complaint and Notice.

Nov. 2—Entering proceedings at hearing on motion to amend complaint—motion granted.

Nov. 3—Filing Order Granting Motion to Amend Complaint.

Nov. 11—Filing Stipulation.

Nov. 19—Filing Answer to amended complaint.

1947

July 7—Filing Motion to substitute as defendant with consent of executrix.

Nov. 5—Entering order setting case for trial to Nov. 14, 1947, at 10 a.m.

Nov. 12—Stipulated that the evidence offered in Civil #419 relative to the Waterhouse Trust Co. transaction will be considered as part of the evidence in this case.

Dec. 16—Filing Application to Extend Time and Order.

1948

Jan. 2—Filing Statement of Disapproval of the Form of Defendant's Draft of Findings of Fact and Conclusions of Law.

Filing Proposed Additions and Amendments to Defendant's Draft of Findings of Fact and Conclusions of Law.

Feb. 11—Filing Defendant's Reply to Plaintiff's Disapproval of the Form of Defendant's Draft of the Findings of Fact and Conclusions of Law.

1948

Filing Additions and Amendments to the Draft of Findings of Fact and Conclusions of Law Heretofore Submitted by Defendant.

Mar. 18—Filing Decision—conforming copy—original filed in C #419.

1949

Oct. 10—Entering proceedings call calendar—To submit form of judgment.

Dec. 7—Filing Findings of Fact and Conclusions of Law.

Filing Judgment—Favor Plaintiff.
(Metzger.) (Prin. \$166.44 Costs \$43.37.)

Entered 12-7-49 at 9:45 a.m.

Filing Certificate of Probable Cause.

1950

Feb. 2—Filing Notice of Appeal (Plaintiff). Mailing copy to District Attorney.

Filing Bond for Costs on Appeal.

Mar. 2—Filing Designation of Record (Plaintiff-Appellant).

Mar. 10—Filing Designation of Record (Defendant-Appellee).

ALEXANDER & BALDWIN EXHIBIT "A"

Admitted.

In the United States District Court for the
Territory of Hawaii
Civil Action No. 474

ALEXANDER & BALDWIN, LIMITED, a Ha-
waiian Corporation,

Plaintiff,

vs.

AGNES M. KANNE, Executrix Under the Will and
of the Estate of Fred H. Kanne, Collector of
Internal Revenue of the United States for the
District of Hawaii,

Defendant.

STIPULATION I

It is hereby stipulated by and between the parties hereto through their respective attorneys that the following statements of fact shall be considered as true, and that either party may offer in evidence, oral testimony or any additional evidence, documentary or otherwise not inconsistent with the facts herein stipulated.

I.

That Alexander & Baldwin, Limited, the Plaintiff herein, is a corporation, incorporated under the laws of the Territory of Hawaii, having its principal office in Honolulu, City and County of Hono-

lulu, Territory of Hawaii; that Fred H. Kanne was the Collector of Internal Revenue of the United States for the District of Hawaii, and a resident of said Honolulu at all times from on or about August 1, 1933, until his death on December 24, 1946; that Agnes M. Kanne, the duly qualified and appointed Executrix of the Will and of the Estate of Fred H. Kanne, deceased, was substituted as Defendant in the above-entitled cause by order of the above-entitled court on March 6, 1947.

II.

Alexander & Baldwin, Limited, the Plaintiff herein, was organized under the corporation laws of the Territory of Hawaii in 1900 with its principal office in Honolulu, and has since acted as an agent or factor for several local sugar and pineapple companies and other companies as well, and as a commission merchant and as the representative of several mainland insurance companies. In 1932 it was the agent for five companies operating sugar plantations, three companies operating pineapple plantations, two ranches, and two railroad and stevedoring companies, all of which companies were local companies and had a total net worth of \$49,-293,366. In 1932 Plaintiff's investment in the securities of the companies for which it acted as agent or factor amounted to over \$11,000,000; and Plaintiff had other investments including an investment of \$1,252,360.38 in its home office building in Honolulu, Territory of Hawaii. On December 30, 1930, Alexander & Baldwin, Limited, and the com-

panies for which it served as agent had on deposit in the banks of the Territory of Hawaii at least a total sum of \$2,275,000.00. The Defendant objects to admissibility in evidence of the aforesaid facts on the ground of their immateriality and irrelevance.

III.

The Henry Waterhouse Trust Company, Limited (hereinafter called the Waterhouse Company, was incorporated under the laws of the Territory of Hawaii on November 26, 1902, to engage in the business usual and permitted to a trust company under the laws of the territory. In addition to engaging in the usual fiduciary business common to all trust companies, it operated a plantation agency department, a real estate department, a stock and bond brokerage department, and an insurance department, and at times invested in stocks and bonds to a limited extent on its own account, these various activities being permissible under the Hawaiian statutes.

IV.

In the middle of October, 1930, Waterhouse increased its capital stock from \$200,000 to \$400,000, consisting of 4,000 shares of a par value of \$100 each. The new shares were all taken by the old stockholders who paid for them in cash at par. In November the effects of the general business depression began to be felt in the Territory of Hawaii, and as a large part of the Waterhouse

assets consisted of real estate and mortgages, its secretary became apprehensive that if many calls were made on its demand accounts the Company's financial condition would not be sufficiently liquid to meet its cash requirements. He discussed the situation with the treasurer and auditor of Waterhouse and then advised the management of Bishop Trust Company, Limited, hereinafter called Bishop Trust, that a sale of the stock might be arranged, suggesting a price of \$100 each or more for the shares.

V.

An Audit Report dated March 31, 1931, signed H. C. Tennent and Co. by E. J. Greaney disclosed the book value of assets of the Waterhouse Company as of February 14, 1931, to be in the amount of \$4,820,090.92 and the liabilities, exclusive of capital and surplus, to be in the amount of \$4,149,437.06. This Audit Report contained the following statement:

"The Contingent Reserve (for losses) of \$680,803.15 and the Special Contingent Reserve of \$400,000.00 referred to above, are considered adequate to cover probable losses in the realization of the assets and liquidation of liabilities."

It is also stated in the Report that the principal purpose of the Audit was to establish as accurately as possible the total assets and liabilities as of February 14, 1931, the date control of the Company passed to the Bishop Trust Company, Limited,

through its acquiring all of the stock of the Waterhouse Company.

It is also stated in the Report that Exhibit A attached thereto, a copy of which is hereunto annexed and made a part hereof as Exhibit A, shows the Capital and Surplus of the Waterhouse Company as of February 14, 1931, before adjustment, the total estimated losses finally agreed upon as acceptable to the Bishop Trust Company, Limited, and the manner of arriving at the Contingent Reserve (for Losses) and the Special Contingent Reserve. In this connection, the Report states, by way of explanation of said Exhibit A, that the balance sheet shows the Profit and Loss account with a debit balance of \$400,000.00 offset against the Contingent Reserve (for Losses); and that this appears as preferable for balance sheet purposes to the alternative of clearing the Capital Stock Account, and produces the same net result.

By way of explanation of Exhibit D attached to the Report, it is stated that the Special Contingent Reserve, as shown in Exhibit A above, will remain intact until actual losses written off have fully exhausted the Contingent Reserve (for Losses) of \$779,717.23; and that additional losses as determined will then be applied pro rata against the Special Contingent Reserve contributions.

VI.

Mr. A. W. T. Bottomley, president of American Factors, Limited, and of the Bishop First National Bank of Honolulu and vice-president of the Bishop

Trust Company, Limited, called a conference of the heads of the four Hawaiian sugar agencies, the president of the Bank of Hawaii, Limited, the president of the Hawaiian Trust Company, Limited, and two members of the finance committee of the Bishop Trust Company, Limited, to present to them the financial condition of the Waterhouse Company and discuss the feasibility of making some plan to prevent the Waterhouse Company from being forced into liquidation.

VII.

The Waterhouse Company was conducting business as usual but was encountering some financial difficulties; economic conditions were not clear, and, after the investigation, the executives of the Bishop Trust Company, Limited, wished to look further into the matter before acting. After February 1, 1931, the Bishop Trust Company, Limited, advised the Waterhouse Company shareholders that it would not pay cash for their shares as had previously been suggested. On Saturday, February 14, 1931, Mr. W. F. Frear, president of the Bishop Trust Company, Limited, at a meeting of the board of directors of that company made a statement which was recorded on the minutes as follows:

“This is a special meeting called to consider a proposition to take over the Henry Waterhouse Trust Co., Ltd. At first it was a proposition to purchase the stock of that company, somewhat as we purchased the stock of the Pacific Trust Co., but

as a result of investigation, it changed largely to a salvage proposition.

“The plan now is for our Company to acquire all the stock of the Waterhouse Trust Co. without cost; for Mr. and Mrs. R. W. Shingle and Mr. A. N. Campbell, in settlement of their indebtedness to the Company, to pay into it \$535,000.00 and to convey to its order their respective 18% and 10% undivided interests in certain land, fish ponds and fishery at Kalihi, the same to be sold for \$87,000.00 and the proceeds, with \$13,000.00 additional contributed by the Bishop Trust Co., to make up an even \$100,000.00, to be paid into the Waterhouse Trust Co., making in all \$635,000.00 thus paid in. In addition, a number of corporations and individuals are to contribute various sums aggregating \$400,000.00, thus making altogether \$1,035,000.00 of cash to be paid into the Waterhouse Trust Co. The Bishop Trust Co. is to pay such amount, if any, as may be required in addition to enable the Waterhouse Trust Company to meet its liabilities, but it is hoped that no such contribution will be required. That, however, remains to be seen.

“The Bishop Trust Co. is to take over, without other cost, the business of the Waterhouse Trust Co., other than the assets and liabilities, and to operate such business at its own expense and for its own benefit. This will include the trusts, executorships, agencies, insurance, safe deposit business, etc., with the necessary furniture, equipment and supplies therefor. It is hoped also that the Bishop

Trust Co. will profit through making new contacts. The stock and bond and real estate departments will probably be discontinued.

“The assets and liabilities of the Waterhouse Trust Co. are to be gradually liquidated by applying the assets to the liabilities, together with the expenses of liquidation, including \$1,000.00 a month to be paid to the Bishop Trust Co. for supervision.

“In final settlement, if there is an excess of assets over liabilities, it is to be applied, first, to the reimbursement of the amount, if any, that may be contributed by the Bishop Trust Co. in addition to the \$1,035,000.00, and, secondly, pro rata to the contributors of the \$400,000.00 with simple interest at 4%, and, thirdly, the balance, if any, to go to the Bishop Trust Co.

“There are three objects: First, to prevent the failure of such a company as the Waterhouse Trust Co., with the consequent general disastrous effects; secondly, to prevent loss on the part of many who have entrusted their money to the Company for investment and who can ill afford the loss; and, thirdly, to enable the Bishop Trust Co. to acquire new business. These three objects naturally appeal with different degrees of force to different groups of contributors.”

The plan, as outlined, was approved by the Board of directors of the Bishop Trust Company, Limited, at that meeting. The transactions mentioned in the second paragraph of Mr. Frear's statement, *supra*, were duly performed within a few days after February 14, 1931.

VIII.

Prior to the consummation of the transactions hereinbefore mentioned, the following individuals and corporations promised to pay to the Waterhouse Company, upon consummation of the proposed plan, the sums of money set opposite their names, to wit:

Name of Contributor	Amount Paid
The Bishop Company, Limited.....	\$100,000
American Factors, Limited.....	50,000
Alexander & Baldwin, Limited.....	50,000
Castle & Cooke, Limited.....	50,000
W. R. Castle.....	50,000
Beatrice Castle Newcomb.....	50,000
Bank of Hawaii.....	25,000
Hawaiian Trust Company, Limited.....	25,000
Total.....	<u>\$400,000</u>

IX.

Annexed hereto as Exhibit B and made a part hereof is an excerpt from the minutes of the meeting of the Board of Directors of Alexander & Baldwin, Limited, held on February 25, 1931, authorizing the aforesaid payment of \$50,000 to the Waterhouse Company. There are also annexed hereto and made a part hereof as Exhibits C, D, E, F and G, excerpts from the minutes of the Directors' meetings of the corporations who made their respective payments to the aforesaid \$400,000 fund of the Waterhouse Company.

X.

The plan of reorganization of the Waterhouse Company was carried out as outlined above, and the individuals and corporations whose names appear in

the preceding paragraph of this stipulation actually paid into the Waterhouse Company the amounts of money stated opposite their respective names upon the provisions concerning the repayment thereof as more particularly stated in the letters to Plaintiff dated February 21, 1931, and February 24, 1931, copies of which are attached hereto and made a part hereof as Exhibits H and I, respectively. Letters identical in form as Exhibits H and I were addressed to each of the individuals and corporations that made payments to the Waterhouse Company aggregating \$400,000, and said letters were duly received by each such individual and corporation.

XI.

Attached hereto and made a part hereof for all purposes and marked Exhibit J is a true copy of a note executed and delivered by the Waterhouse Company to Plaintiff in the principal sum of \$50,000.00, being the note referred to in said letter, Exhibit H. Notes identical in form were executed and delivered by the Waterhouse Company to each such other corporation and to each such individual, which said notes were in each instance for the principal sum of money as stated opposite the name of the respective individuals and corporations hereinbefore stated.

XII.

The actual owners of the capital stock of the Waterhouse Company on February 14, 1931, shortly

prior to the transfer of the stock of that company to the Bishop Trust Company, Limited, were as follows:

Stockholder	Shares	Par Value
A. N. Campbell	1,235	\$123,500.00
R. W. Shingle.....	1,235	123,500.00
A. L. Castle.....	700	70,000.00
J. K. Clarke.....	480	48,000.00
Harriet E. Wight.....	100	10,000.00
C. L. Wight.....	100	10,000.00
Marietta Withington	50	5,000.00
Arthur Withington	50	5,000.00
Estate of E. M. Lewis.....	50	5,000.00
Total.....	4,000	\$400,000.00

XIII.

The four stockholders whose names appear first on the above list, namely, A. N. Campbell, R. W. Shingle, A. L. Castle and J. K. Clarke, were directors of the Waterhouse Company. Mr. W. R. Castle, father of A. L. Castle, purchased from the stockholders, other than Messrs. Campbell, Shingle and Clarke, their shares of the capital stock of the Waterhouse Company as follows:

Stockholder	Shares	Par Value
Harriet E. Wight	100	\$10,000.00
Charles L. Wight.....	100	10,000.00
Marietta Withington	50	5,000.00
Arthur Withington	50	5,000.00
Estate of E. M. Lewis.....	50	5,000.00
Total.....	350	\$35,000.00

Thus, on February 14, 1931, the following persons were the stockholders of the Waterhouse Company,

and they were the owners of the number of shares shown opposite their names, to wit:

Stockholder	Shares	Par Value
A. N. Campbell	1,235	\$123,500.00
R. W. Shingle.....	1,235	123,500.00
A. L. Castle.....	700	70,000.00
W. R. Castle.....	350	35,000.00
J. K. Clarke.....	480	48,000.00
Total.....	4,000	\$400,000.00

XIV.

The \$400,000 par value of capital stock of the Waterhouse Company was transferred by the afore-said stockholders to the Bishop Trust Company, Limited, as of February 14, 1931, and the cash balances, properties, stocks and bonds, accounts, books and records of the Waterhouse Company came under the management and control of the new stockholder, the Bishop Trust Company, Limited. New officers and directors were elected, a finance committee, comprised of officers and directors, and an advisory committee comprised of representatives of the \$400,000 noteholders, were appointed, and work was immediately commenced on the liquidation of the Waterhouse Company.

XV.

There is annexed hereto as Exhibit K and made a part hereof condensed balance sheets of the Waterhouse Company as at February 14, 1931, before and after the reorganization.

XVI.

On May 29, 1931, the vice-president and manager of the Bishop Trust Company, Limited, who was also

a director of the Waterhouse Company, stated to the board of directors of the Bishop Trust Company, Limited, that the operation of the Waterhouse Company business was causing a monthly loss "as it is in the nature of a receivership." He added the belief that "the bulk of the work in straightening out the affairs of the company will be accomplished within a year or two." At a meeting of June 26, 1931, he advised the board of directors of the Bishop Trust Company, Limited, that:

"* * * he had made a recommendation to the Bishop Trust Company of a transfer of all of the work of the Waterhouse Trust Company directly to the Bishop Trust Company, with the exception of the collection agency end of the business."

At the same time he stated his belief that the Bishop Trust Company, Limited, would suffer no loss if business should again become normal. Thereupon the Bishop Trust Company, Limited, took over some of the Waterhouse Company business, but the Waterhouse Company continued to do some business until it, the Guardian Trust Company, Limited, and the Pacific Trust Company, Limited, were formally merged into the Bishop Trust Company, Limited, on December 30, 1933, as hereinafter set forth.

XVII.

There is annexed hereto as Exhibit L and made a part hereof condensed balance sheets of the Waterhouse Company as at December 31, 1931, and December 31, 1932.

XVIII.

The advisory committee referred to in Exhibit I was composed of prominent business and professional men who represented the aforesaid note holders who had made payments into the aforesaid \$400,000.00 fund. The original committee consisted of:

1. A. W. T. Bottomley (now deceased) whose alternates were S. M. Lowrey, who was then treasurer of American Factors, Limited, and H. A. Walker who is now president of American Factors, Limited.

2. C. H. Cooke, then president of the Bank of Hawaii, Limited, whose alternates were R. McCorriston, now a vice-president of the Bank of Hawaii, Limited, G. G. Fuller, now retired, who was a vice-president of the Bank of Hawaii until his retirement, and E. W. Carden who is now president of the Bank of Hawaii.

3. A. L. Castle, an attorney at law, at present a partner in the firm of Robertson, Castle & Anthony, whose alternates were F. C. Atherton (now deceased) then the president of Castle & Cooke, Limited, and A. G. Budge, now president of Castle & Cooke, Limited.

The composition of the advisory committee changed from time to time thereafter and among the other persons who attended meetings as a member of the committee was: James L. Cockburn who was then the executive vice-president of Bishop & Company, Limited.

This committee met frequently with the finance committee of the Waterhouse Company and passed upon all matters of importance affecting that Company and particularly those matters tending to affect the amount of reimbursement, if any, ultimately to be made to the special note holders. It advised with Bishop Trust Company, Limited, and its members were consulted from time to time by the Plaintiff and other special note holders.

XIX.

Under date of July 18, 1932, the Waterhouse Company, over the signature of M. B. Henshaw, vice-president, dispatched to the Plaintiff a letter, a true copy of which is annexed hereto as Exhibit M and made a part hereof. The defendant objects to the admissibility in evidence of Exhibit M on the following grounds, viz: (a) that the statements made therein are immaterial to any issue involved herein; and (b) that its admission in evidence for the purpose of proving the truth and accuracy of the statements made therein concerning the reappraisal of the assets and liabilities of the Waterhouse Co., and the competency and accuracy of such reappraisal would constitute a violation of the hearsay rule, and such evidence is also incompetent. Letters identical in form to Exhibit M were dispatched by the Waterhouse Company to the other noteholders and received by them. The advisory committee was not abrogated but continued to function as usual during the balance of the year 1932 and the year 1933.

XX.

During 1933 for the stated purpose of simplifying its financial structure and effecting economies, Bishop Trust Company, Limited, decided to effect a merger. Attached hereto, made a part hereof for every purpose, and marked Exhibit N is a copy of a letter dated December 19, 1933, sent by the Waterhouse Company to the Bishop Company, Limited. Letters identical in form with Exhibit N were sent to and received by each of the aforesaid Waterhouse Company noteholders.

XXI.

On December 21, 1933, a meeting of the said Waterhouse Company noteholders was held at which the holders of \$300,000 out of a total of \$400,000 of the notes outstanding were represented as follows:

Noteholder	Representative	Amount of Note Held
American Factors, Ltd.	S. M. Lowrey	\$ 50,000
Alexander & Baldwin, Ltd.	C. R. Linden	50,000
The Bishop Company, Ltd.	George P. Rea	100,000
W. R. Castle	Alfred L. Castle	50,000
Alfred L. Castle, as executor under will of Beatrice Castle Newcomb, deceased	Alfred L. Castle	50,000
	Total	<u>\$300,000</u>

The noteholders who were not represented at this meeting were:

Noteholder	Amount of Note
Castle & Cooke, Ltd.	\$ 50,000
Bank of Hawaii	25,000
Hawaiian Trust Co., Ltd.....	25,000
Total	<u>\$100,000</u>

Present by invitation were Messrs. C. F. Weeber and M. B. Henshaw. The minutes of the meeting record that——

“Mr. Henshaw stated that the purpose of the meeting was to consider the letters dated December 19 which had been sent out to all of the corporations and/or individuals who had loaned money to Henry Waterhouse Trust Co., Ltd., in February, 1931,” and after some discussion it was the unanimous opinion of those present that proposal No. 1 as set forth in the letters dated December 19, 1933 (Exhibit N), be approved.

The minutes of that meeting also record that——

“Mr. Linden suggested that after the proposed merger the Advisory Committee be continued, at least until such time as the question of whether the notes held by the underwriters become a loss in the year 1932, is definitely settled. It was the concensus of opinion that this suggestion be followed.”

XXII.

Following the merger aforesaid, on December 30, 1933, the Bishop Trust Company, Limited, for the purpose of accounting to the aforesaid noteholders kept separate accounting records referred to as the “Waterhouse Section,” of the Waterhouse Company assets acquired and the liabilities assumed in respect thereto. Among the records so kept, a special account designated “Notes Payable—Underwriters H W T—New” was set up to cover the \$400,000 paid in by the aforesaid noteholders and the charges

against it. This account at December 30, 1933, showed a credit balance of \$400,000.

XXIII.

The following is a statement of book value of the Waterhouse Company assets, exclusive of cash, on the indicated-dates, actual losses sustained on liquidation to the indicated dates, set up on the latter's books, and the estimated losses on liquidation arrived at by a group of officers of the Bishop Trust Company, Limited:

	Book value of assets exclusive of cash	Actual losses sustained on liquidation	Estimated loss on liquidation
Feb. 14, 1931	\$4,275,543.05	-----	\$1,080,803.15
Dec. 31, 1931	3,697,746.38	\$324,913.77	-----
1932	2,993,234.31	410,345.80	-----
1933	2,965,675.99	571,482.80	*936,352.98

XXIV.

Plaintiff's books of account were kept on the cash basis of accounting, and, during the calender years 1924 to 1932, inclusive, they were so kept, and its Federal Income Tax returns for those years were made on that basis of accounting.

XXV.

The following is a statement of the journal entries in the books of Alexander & Baldwin, Limited, with

*Estimate made by Bishop Trust Company's comptroller of the losses that would be sustained on the liquidation of the remaining assets.

reference to the Henry Waterhouse Trust Company note for \$50,000.00:

(December 31, 1931, July-December Journal Page 151.)

Profit & Loss	\$25,000.00
Bills Receivable	\$25,000.00

1/2 note H. Waterhouse Trust Co. 2/21/31 written off.

(August 8, 1932, July-December Journal Page 32.)

Profit & Loss	\$25,000.00
Bills Receivable	\$25,000.00

Balance of note of H. Waterhouse Trust Co. for \$50,000.00 dated Febr. 21, 1931, written off uncollected. Refer to letter H. W. T. Co. 7/18/32

XXVI.

In the Plaintiff's federal income tax return for the taxable year 1932, at item 20 on page 1 thereof, the Plaintiff took as a bad debt deduction the entire amount of \$50,000 paid by Plaintiff to the Waterhouse Company in 1931. After investigation by his revenue agents and after protest and hearing accorded Plaintiff's representatives, the Commissioner of Internal Revenue determined that the \$50,000 paid to the Waterhouse Company was not allowable as a bad debt deduction for the year 1932.

XXVII.

In the year 1932 the Plaintiff contributed to the Hawaii Bureau of Governmental Research \$1,000.

This bureau was organized under the laws of the Territory of Hawaii in 1928 by representatives of local business firms, and membership was available to any taxpayer of Hawaii upon contribution of not less than \$10 a year.

In operation, the Bureau of Governmental Research offers, and during the entire calendar year 1932 it also offered, gratuitous advice and assistance to the Governor of the Territory and governmental bureaus and agencies, usually at their request; studies and devises plans designed to effect efficiency and economy in governmental administration; analyzes proposed legislation and makes recommendations thereon to the territorial legislature; and supplies interested organizations, such as churches, chambers of commerce, and groups of citizens, with information and counsel on proposed legislative measures. The bureau has no political aspects. Typical of the bureau's activities are a survey and suggested revision of the administrative organization of Maui County made in 1933 and an analysis of income tax returns made in 1934 at the request of an advisory committee on taxation to determine the ability to pay of various taxpayers.

The bureau is supported entirely by its members' voluntary contributions which range from \$10 to \$10,000 a year. An attempt is made to interest all of the people of the Territory of Hawaii in the bureau and make it a citizens agency. Contributions to the bureau are made by corporations, individuals, and chambers of commerce. Definite amounts are

requested of the several members, apportioned on the basis of taxes paid, but each member is free to give what he wishes, and some members contribute at intervals longer than a year, or sporadically. About 75 per cent of the bureau's receipts come from corporations.

In its federal income tax return for the calendar year 1932 the taxpayer deducted the amount of the above contribution as an ordinary and necessary business expense, and the Commissioner of Internal Revenue after investigation determined that the amount was not allowable as a deduction, for the reasons stated in his 90-day deficiency letter dated June 2, 1936.

VITOUSEK, PRATT & WINN,
By /s/ C. DUDLEY PRATT,
Counsel for Plaintiff.

/s/ RAY J. O'BRIEN,
United States Attorney,
District of Hawaii,
Counsel for Defendant.

/s/ LELAND T. ATHERTON,
Special Assistant to the Attorney General of Coun-
sel for Defendant.

EXHIBIT A

Henry Waterhouse Trust Co., Ltd.
Analysis of Capital Adjustments for Reorganization
February 14th, 1931

Capital and Surplus Before Adjustment :

Capital Stock		*\$400,000.00
Surplus Earned	\$ 200,000.00	
Profit and Loss	158,575.93*	
Special Reserve	15,000.00	
Sundry Accounts Special	1,141.30	
Reserve for Taxes	5,000.00	

Total Surplus 379,717.23

Total Capital and Surplus transferred to Reserve..... \$779,717.23

Shingle and Campbell

Accounts Net ..	\$ 733,914.08
Estimated Losses	1,080,803.15

Total (Basis for Reorganization) \$1,814,717.23

Payments:

R. W. Shingle	\$ 492,137.23
A. N. Campbell.....	142,862.77

Total Direct Payments....\$ 635,000.00

Bishop First Nat'l Bank....	\$ 100,000.00
Bank of Hawaii, Ltd.	25,000.00
Hawaiian Trust Co., Ltd..	25,000.00
American Factors, Ltd.	50,000.00
Alexander & Baldwin, Ltd.	50,000.00
Castle & Cooke, Ltd.	50,000.00
W. R. Castle	50,000.00
Beatrice Castle Newcomb..	50,000.00

Total Contingent

Payments\$ 400,000.00

Total Payments \$1,035,000.00

Balance of estimated losses to apply against reserve
created by transfer from Surplus..... \$779,717.23

* For balance sheet purposes a debit balance of \$400,000.00 is set up in the Profit and Loss Account to offset the Capital Stock Account which stands with a credit balance of \$400,000.00.

EXHIBIT B

Excerpt From Minutes of Directors' Meeting of
Alexander and Baldwin, Limited, Held February
25, 1931

Loan to Henry Waterhouse Trust Company, Ltd.

On motion by Mr. Galt, seconded by Dr. Dean, the loan of \$50,000.00 to the Henry Waterhouse Trust Company, Limited, which had been made with the informal approval of a majority of the Board, was also formally ratified and confirmed.

EXHIBIT C

Excerpt From Minutes of Directors' Meeting of
American Factors, Limited, Held March 2,
1931

“President Bottomley informed the Directors of the circumstances surrounding the taking over of the business of the Henry Waterhouse Trust Company, Limited, by the Bishop Trust Company, Limited, and stated that, following consultation with such of the Directors as he was able to reach in the time available, it was deemed advisable in the interests of the business community as a whole that this Company join with others in certain financing required for this transaction. President Bottomley stated further that a loan had been made to the Henry Waterhouse Trust Company, Limited, in the amount of \$50,000.00 against its note dated February 21st, 1931, bearing 4% interest, and repayable when and if in the opinion of the officers of the

Bishop Trust Company, Limited, the sound assets of the Henry Waterhouse Trust Company, Limited, are equal to its liabilities and asked the approval of the Directors of his action in agreeing to make this loan. On motion of Mr. Atherton, seconded by Mr. Dillingham and carried unanimously, the action of President Bottomley in authorizing the above-mentioned loan was ratified and approved."

EXHIBIT D

Excerpt From Minutes of Directors' Meeting of
Hawaiian Trust Company, Limited, Held February 26, 1931

Loan to Henry Waterhouse Trust Company, Ltd.

President Galt stated that he had been reliably informed that Henry Waterhouse Trust Company, Ltd., had become seriously involved financially, and that our company and others had rendered assistance; our company to the extent of a \$25,000.00 loan, in order to protect the four or five hundred depositors of the Henry Waterhouse Trust Company.

Director Hemenway moved that this loan of \$25,000.00 to Henry Waterhouse Trust Company, Limited, be approved. The motion was seconded by Director McInerny and carried unanimously.

EXHIBIT E

Excerpt From Minutes of Directors' Meeting of
Castle and Cooke, Limited, Held March 5,
1931

President F. C. Atherton referred to the letter circulated among the Directors under date of February 24, 1931 (copy appended hereto) recommending that the sum of \$50,000.00 be loaned to the Henry Waterhouse Trust Company, Limited, to prevent that company from going into bankruptcy and thus causing widespread financial losses throughout the community. Although this loan had been informally approved by the Directors, in view of the importance of the subject it would seem advisable to take formal action at this time approving and ratifying the original action and also placing the foregoing letter in the records of the Company.

It was moved by Director Atherton Richards and seconded by Director H. K. L. Castle that the Directors hereby formally ratify and approve their action taken informally under date of February 24, 1931, authorizing a loan of \$50,000.00 to the Henry Waterhouse Trust Company, Limited, in conjunction with other loans to the said Company by other business houses of this city, and that the letter of President F. C. Atherton to the Directors referred to above be placed on record in the Minute Book; that in view of the rumors which are in circulation in the community regarding the financial condition of the said Henry Waterhouse Trust Company, Limited, the proper officers of this company are

hereby requested to ask the Territorial Government to make such review of the transactions and records of the Henry Waterhouse Trust Company, Limited, as is deemed appropriate and desirable.

Carried.

EXHIBIT F

Excerpt From Minutes of Directors' Meeting of
Bank of Hawaii Held March 12, 1931

"The President read . . . Report of the Advisory Committee of March 11, 1931, in which no comments were made on the loans granted from February 15th to 28th, 1931. The Committee called the attention of the Directors to the loan of \$25,000.00 to the Henry Waterhouse Trust Company, Limited, at a special rate of interest—4%."

EXHIBIT G

Excerpt From Minutes of Directors' Meeting of
the Bishop Company, Limited, Held March 12,
1931

"It was moved by Director John Waterhouse, seconded by Director Ellis and unanimously carried

"That the loan to Henry Waterhouse Trust Company, Limited, of \$100,000.00 at four per cent, on conditional note of the company, be and the same hereby is approved and confirmed and that copies of the note and letters as submitted outlining terms and conditions of repayment of the note be incorporated in these minutes."

EXHIBIT H

Honolulu, Hawaii.

February 21, 1931.

The Bishop Company, Limited,
Honolulu, T. H.

Gentlemen:

We outline as follows the plan in regard to the Henry Waterhouse Trust Company, Limited.

1. The Bishop Trust Co., Ltd., has acquired all of the capital stock of the Henry Waterhouse Trust Co., Ltd.

2. In settlement of their indebtedness to the Henry Waterhouse Trust Co., Ltd., R. W. Shingle and wife have paid into that Company \$435,000.00; A. N. Campbell has paid into it \$100,000.00; and R. W. Shingle and A. N. Campbell are to convey to the Company or to its order their respective 18% and 10% undivided interests in certain land, fish ponds and fishery at and near Mokauea, Kalihikai, Honolulu, the same to be sold and the proceeds thereof, plus such additional sum (to be contributed by Bishop Trust Co., Ltd.) as shall be necessary to make a total of \$100,000.00, to be paid to the Henry Waterhouse Trust Co., Ltd.

3. The following corporations and individuals have contributed or are to contribute the following sums to the Henry Waterhouse Trust Co., Ltd.: The Bishop Co., Ltd., \$100,000.00; American Factors, Ltd., Alexander & Baldwin, Ltd., Castle &

Cooke, Ltd., W. R. Castle and Beatrice Castle Newcomb each \$50,000.00; and the Bank of Hawaii, Ltd., and the Hawaiian Trust Co., Ltd., each \$25,000.00. For the amounts of these contributions notes of the Henry Waterhouse Trust Co., Ltd., of even date herewith, bearing simple interest at the rate of four per cent (4%) per annum, have been or will be given to the respective contributors, payable, however, only as provided in paragraph 8.

4. The Bishop Trust Co., Ltd., will ultimately contribute such amount, if any, over the above sums aggregating \$1,035,000.00, as may be required to liquidate the liabilities (other than the sums or notes mentioned in paragraph 3) of the Henry Waterhouse Trust Co., Ltd.

5. The Bishop Trust Co., Ltd., will take over, own and operate at its own expense and for its own benefit, in its own name or in the name of the Henry Waterhouse Trust Co., Ltd., the business (with such of the furniture, equipment and supplies as shall be required therefor) other than the assets subject to the liabilities (referred to in paragraph 6) of the Henry Waterhouse Trust Co., Ltd., any of the business so taken over by the Bishop Trust Co., Ltd., may by it be discontinued, sold or merged with its other business.

6. The assets and liabilities of the Henry Waterhouse Trust Co., Ltd., will gradually be liquidated by applying the assets or their proceeds and the income therefrom to (a) the expenses involved in such liquidation (such as salaries, taxes, rent, in-

surance, legal, auditing, bank examiner, postage, cables, books, stationery, etc.); (b) \$1,000.00 per month to the Bishop Trust Co., Ltd., for overhead or supervision; (c) interest payable; (d) indebtedness; and (e) other liabilities, if any. The assets shall be deemed to include cash on hand, bank deposits, notes and accounts receivable, stocks and bonds, stock exchange seat, and furniture, equipment and supplies (except as otherwise provided in paragraph 5) owned by the Henry Waterhouse Trust Co., Ltd., at the close of business on February 14, 1931, and the sums since paid or to be paid in as set forth in paragraphs 2, 3 and 4; the liabilities shall be deemed to include all liabilities of the company as of that date, and liabilities subsequently incurred in connection with the liquidation; the expenses of operation shall be deemed to include, besides other items, the cost of investigation by accountants preliminary to the reorganization, the cost of an audit of the Company's affairs and of the set-up of the accounting system at the outset by accountants, a proper pro rata of salaries of officers and employees of the Bishop Trust Co., Ltd., transferred temporarily for the reorganization, rehabilitation and readjustment of the affairs of the Henry Waterhouse Trust Co., Ltd., at the outset and a proper pro rata of the salaries of officers and employees of the Henry Waterhouse Trust Co., Ltd., so long as their services are rendered in part in connection with the liquidation and in part in connection with the business taken over

by the Bishop Trust Co., Ltd. It is proposed, for convenience, efficiency and economy, to transfer the various branches of the business to the Bishop Trust Building as soon as the circumstances warrant.

7. In final settlement, the excess, if any, of the assets as defined in paragraph 6 or their proceeds and the income therefrom over the payments specified in paragraph 6 is to be applied, so far as it will go, in the following order of priority: First, to reimbursing the Bishop Trust Co., Ltd., for such amount, if any, without interest as may be contributed by it under paragraph 4 above; secondly, to paying pro-rata, principal and interest, the notes mentioned in paragraph 3, and thirdly, the balance, if any, of such excess to be paid to the Bishop Trust Co., Ltd.

8. The Henry Waterhouse Trust Co., Ltd., may from time to time borrow money (from the Bishop Trust Co., Ltd., and/or others) to meet its requirements in connection with the liquidation and repay the same with interest. The notes (principal and interest) mentioned in paragraph 3 shall be payable only if and to the extent that there shall be an excess of assets available therefor in final settlement after the payments specified in paragraph 6 and the reimbursement of the Bishop Trust Co., Ltd., provided for in subdivision First of paragraph 7. The books of the Henry Waterhouse Trust Co., Ltd., shall be closed at the end of each calendar half year and a financial statement for such half

year shall thereupon be furnished to each of the contributors named in paragraph 3. Such contributors shall have the right to inspect the books of the Company at all reasonable times.

Very truly yours,

HENRY WATERHOUSE TRUST
COMPANY, LIMITED,

By W. F. FREAR,
Its President

By W. A. WHITE
Its Treasurer.

Approved:

BISHOP TRUST COMPANY, LIMITED

By W. F. FREAR
Its President

By E. W. SUTTON
Its Treasurer.

EXHIBIT I

Honolulu, Hawaii,
February 24, 1931

The Bishop Co., Ltd.,
Honolulu, T. H.

Gentlemen:

Supplementing our letter of the 21st instant in regard to the Henry Waterhouse Trust Co., Ltd.:

1. There is a Finance Committee, consisting at present of M. B. Henshaw, J. L. Cockburn and E. W. Sutton, for frequent consultation on numer-

ous matters, including many that naturally it would be impracticable to bring before the Advisory Committee referred to in the next paragraph.

2. There will be an Advisory Committee for passing upon various matters of importance, particularly those tending to affect the amount of reimbursement, if any, ultimately to be made to the contributors mentioned in paragraph 3 of the letter above referred to—such matters as sales of stocks and bonds owned by the Company, compromises of claims by or against the Company, etc. This Committee will consist for the present of A. W. T. Bottomley, C. H. Cooke and A. L. Castle, with alternates as follows to act in their several respective places when they cannot act: H. A. Walker and S. M. Lowrey, alternates to A. W. T. Bottomley; R. McCorriston and E. W. Carden, alternates to C. H. Cooke; F. C. Atherton and A. G. Budge, alternates to A. L. Castle.

Very truly yours,

HENRY WATERHOUSE TRUST
COMPANY, LIMITED,

By W. F. FREAR,

Its President

By W. A. WHITE

Its Treasurer.

Approved:

BISHOP TRUST COMPANY, LIMITED

By W. F. FREAR

Its President

By E. W. SUTTON

Its Treasurer.

EXHIBIT J

February 21, 1931

(\$50,000.00)

For value received, the Henry Waterhouse Trust Company, Limited, promises to pay to Alexander & Baldwin, Limited, Fifty Thousand Dollars (\$50,000.00), with interest thereon from date at the rate of four per cent (4%) per annum, payment of principal and interest to be made only when, if and to the extent that there shall be funds available therefor as set forth in letter of this date from the payor to the payee.

HENRY WATERHOUSE TRUST
COMPANY, LIMITED,

By W. F. FREAR
Its President

By W. A. WHITE
Its Treasurer

EXHIBIT K

Henry Waterhouse Trust Company Balance Sheets

	As at 2/14/31 (Before Re- organization)	As at 2/14/31 (After Re- organization)
Assets:		
Cash	\$ 9,547.87	\$1,044,547.87
Investments	605,181.47	605,181.47
Receivables	77,184.34	77,184.34
Trust and agency accounts (Shingle & Campbell)	733,914.08	.....
Other trust & agency accounts	1,439,567.36	1,439,567.36
Loans	1,978,492.73	1,978,492.73
Other assets	75,117.15	75,117.15
Stocks and bonds .....	.....	.....
Stocks in subsidiaries .....	.....	.....
Advances to subsidiaries .....	.....	.....
Real estate for sale .....	.....	.....
Expense in suspense .....	.....	.....
Profit and loss—Special .....	.....	400,000.00
	<u>\$4,919,005.00</u>	<u>\$5,620,090.92</u>

Liabilities:

Overdrafts balances due Brokers, etc...\$	457,545.90	\$ 457,545.90
Notes payable	223,100.00	223,100.00
Trust & agency accounts	2,978,515.16	2,978,515.16
Loans pledged to elients	490,276.00	490,276.00
Merchandise accounts .....	.....	.....
Notes payable—affiliated .....	.....	.....
Income in suspense .....	.....	.....
P. & L. Acct.— operating deficit 2/14/31 .....	.....	(10,149.29)
P. & L. Acct.—operating deficit subsequent to 2/14/31 .....	.....	.....
Surplus & surplus reserves	369,567.94	.....
Reserve for losses .....	.....	680,803.15
Contingent reserve—underwriters .....	.....	400,000.00
Capital stock	400,000.00	400,000.00
	<u>\$4,919,005.00</u>	<u>\$5,620,090.92</u>

EXHIBIT L

Henry Waterhouse Trust Company Balance Sheets

Assets:	As at 12/31/31	As at 12/31/32
Cash	\$ 29,700.69	\$ 14,639.50
Investments .....	.....	.....
Receivables .....	.....	15,214.69
Trust and agency accounts (Shingle & Campbell) .....	.....	.....
Other trust & agency accts.	383,460.67	299,565.32
Loans	2,247,844.14	1,624,740.12
Other assets	17,434.16	17,326.66
Stocks and bonds	251,220.65	267,122.42
Stocks in subsidiaries	303,704.16	303,704.16
Advances to subsidiaries	324,382.60	314,787.92
Real estate for sale	169,700.00	233,273.02
Expense in suspense .....	.....	17,500.00
Profit and Loss—Special	400,000.00	400,000.00
	<u>\$4,127,447.07</u>	<u>\$3,507,873.81</u>

Liabilities:

Overdrafts balances due Brokers, etc...\$	79,578.59	\$ 46,648.10
Notes payable	376,557.98	674,190.88
Trust & agency accounts	1,834,540.86	1,068,907.28
Loans pledged to clients	198,000.00	132,128.00
Merchandise accounts	1,252.11	.....
Notes payable—affiliated Co.	550,000.00	602,500.00
Income in suspense .....	.....	2,417.13
P. & L. Acct.—operating deficit 2/14/31	(10,149.29)	(10,149.29)
P. & L. Acct.—operating deficit subsequent to 2/14/31	(58,526.56)	(80,062.56)
Surplus & surplus reserves .....	.....	.....
Reserve for losses	356,193.38	271,294.27
Contingent reserve—Underwriters	400,000.00	400,000.00
Capital stock	400,000.00	400,000.00
	<u>\$4,127,447.07</u>	<u>\$3,507,873.81</u>

EXHIBIT M

Henry Waterhouse Trust Company, Limited

P. O. Box 3410

Honolulu, Hawaii

July 18, 1932.

Alexander & Baldwin, Ltd.,

Honolulu, T. H.

Gentlemen:

Under date of February 21, 1931, you loaned to this Company the sum of \$50,000.00 for which we gave you our promissory note repayable upon the terms and conditions set forth in our letter to you of like date.

On February 24, 1931, it was agreed that there should be an Advisory Committee representing your Company and the other corporations and/or individuals (hereinafter called the "Underwriters") who loaned to this Company an aggregate of \$400,000.00, the duties of said Committee being to pass upon various matters of importance, particularly those which might affect the amount of reimbursement ultimately to be made to said Underwriters.

Early in 1932 the Advisory and Finance Committees of this Company decided that it was advisable to reappraise all of its assets; an exhaustive reappraisal disclosed that its liabilities, other than those to the Underwriters and Stockholders, exceeded the value of its assets by a very considerable amount.

Since that time market conditions have become worse. We are now quite confident, and accordingly advise you, that in our opinion the promissory note of \$50,000.00 above referred to is of no value whatever. Despite the worthlessness of the note it remains an apparent liability of this Company and operates as a hindrance to its speedy liquidation, especially as so long as it remains on our books the Advisory Committee will have to be continued. Hence we suggest that you concede the worthlessness of the note by formally authorizing this Company to consider that it is no longer an obligation. We have been informed that, under these circumstances, you may claim said bad debt as a deduction in your income tax return for 1932, provided you write it off your books during said year.

If the foregoing suggestion is approved by all of the "Underwriters" it will no longer be necessary to have an Advisory Committee and we therefore ask that such Committee be abrogated.

Very truly yours,

HENRY WATERHOUSE
TRUST Co., LTD.,

/s/ M. B. Henshaw,
Vice-President.

EXHIBIT N

December 19, 1933

The Bishop Company, Ltd.,
Honolulu, T. H.

Attention: Mr. George P. Rea,
Executive Vice-President

Gentlemen:

It is planned to merge the Guardian, Pacific and Henry Waterhouse trust companies into the Bishop Trust Co., Ltd., for purposes of economy and simplicity of financial structure, under the provisions of Act 169 of the Session Laws of 1931. This plan has been approved unanimously at meetings of the directors of the four companies, and will be submitted to their stockholders respectively at meetings to be held on the 28th instant with a view to completing the merger by the end of the year.

Referring to the notes given to you and others by the Henry Waterhouse Trust Co., Ltd., when that company was taken over by the Bishop Trust Co., Ltd., the payment of which was contingent as therein set forth, and referring also to the letters of the Henry Waterhouse Trust Co., Ltd., to you and such others accompanying those notes and setting forth the agreement entered into at that time;

It is proposed (1), if the holders of said notes so desire, after the merger, to keep earmarked the assets and liabilities of the Henry Waterhouse Trust Co., Ltd., as well as accurate accounts of all amounts

which the Bishop Trust Co., Ltd., shall have theretofore contributed, advanced or loaned to the Henry Waterhouse Trust Co., Ltd., or which it may thereafter contribute or advance toward meeting such liabilities, so as to protect the rights of such holders in case by any possibility there should ultimately be an excess of such assets over such liabilities plus or including such contributions, advances and loans made and to be made by the Bishop Trust Co. and interest thereon, although it now appears to have become certain that, mainly in consequence of the depression, there will be no such excess to apply on account of said notes; said agreement to continue to apply in respect of such assets, liabilities, contributions, advances and loans as if there were no merger except that item “(b) \$1,000 per month to the Bishop Trust Co., Ltd., for overhead or supervision” in paragraph 6 shall not be operative;

Or (2) that such holders, on the theory that such notes have become worthless and to avoid needless expense to the Bishop Trust Co., Ltd., signify their willingness that no such earmarking or accounts be kept after the merger.

A meeting will be held on Thursday, December 21, 1933, at 2:30 P.M. in the Board Room of the Bishop Trust Building at which time and place we shall be pleased to answer any and all questions and to give you any information which you may desire respecting the above matters.

Thereafter we will appreciate it if you will inform

up whether or not proposal (2) is acceptable to you or, if not, whether you approve of proposal (1).

Very truly yours,

HENRY WATERHOUSE
TRUST CO., LIMITED,

M. B. Henshaw,
Vice-President.

[Title District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, Wm F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause consists of the following listed original pleadings in said cause as requested in Appellant's Designation of Record, save and except that portion of the transcript of proceedings and the exhibit marked "American Factors Exhibit No. "P-13" listed in items 6 and 7 respectively of said Designation of Record:

Complaint.

Answer.

Motion to Amend Complaint and Notice of Hearing on Motion.

Order Granting Motion to Amend Complaint.

Motion to Substitute Executrix as Defendant with Consent of Executrix.

Findings of Fact and Conclusions of Law.

Judgment.

Certificate of Probable Cause.

Notice of Appeal.

Bond for Costs on Appeal.

Designation of Record.

Designation of Record.

Alexander & Baldwin Exhibit "A."

I further certify that included in said record on appeal is a true and correct copy of the joint Decision rendered and of record in Civil No. 419 and Civil No. 474 of this court.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 11th day of March, 1950.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District
Court, District of Hawaii.

[Endorsed]: No. 12500. United States Court of Appeals for the Ninth Circuit. Alexander & Baldwin, Limited, a Corporation, Appellant, vs. Agnes M. Kanne, Executrix under the will and of the Estate of Fred H. Kanne, Collector of Internal Revenue of the United States for the District of Hawaii, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed March 13, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 12500

ALEXANDER & BALDWIN, LIMITED, a Hawaiian Corporation,

Appellant,

vs.

AGNES M. KANNE, Executrix under the Will and of the Estate of Fred H. Kanne, Collector of Internal Revenue of the United States for the District of Hawaii,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL.

The points upon which Alexander & Baldwin, Limited, plaintiff and appellant in the above entitled cause, intends to rely on this appeal are as follows:

1. The District Court erred in concluding that the payment in 1931 by the plaintiff of \$50,000.00 to Henry Waterhouse Trust Company, Limited, was just a contribution.

2. The District Court erred in concluding that the note for \$50,000.00 given by Henry Waterhouse Trust Company, Limited in 1931 was contingent in payment and was subject to such conditions as

to render it non-negotiable and in concluding that the note was without any negotiable value at the time it was made and at all times thereafter.

3. The District Court erred in concluding that the note given by Henry Waterhouse Trust Company, Limited, to the plaintiff in 1931 could not be dealt with as a debt.

4. The District Court erred in concluding that the contingencies as to payment and/or the lack of negotiable value prevented said note from being an evidence of debt.

5. The District Court erred in concluding that the Commissioner of Internal Revenue did not err in disallowing plaintiff a deduction therefor as a bad debt in computing its taxable net income for the calendar year 1932.

6. The District Court erred in concluding that no part of the payment of \$50,000.00 made to Henry Waterhouse Trust Company, Limited, in 1931 by plaintiff was deductible as a bad debt ascertained to be worthless and charged off within the tax year 1932 or a loss sustained during that taxable year.

7. The District Court erred in failing to render judgment in favor of plaintiff on account of plaintiff's overpayment of income tax for the year 1932 for the amount of \$8,488.63 with interest thereon instead of the amount of \$137.50 with interest thereon in the amount of \$28.94.

Dated: Honolulu, T. H., this 2nd day of March, 1950.

ALEXANDER & BALDWIN,
LIMITED,

By /s/ C. DUDLEY PRATT,

By /s/ VERNON O. BORTZ,

Its Attorneys.

Receipt of copy acknowledged.

[Endorsed]: Filed Mar. 13, 1950.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED.

Alexander & Baldwin, Limited, appellant in the above-entitled cause, hereby designates for printing the following portions of the record on appeal:

1. Complaint.
2. Defendant's Answer to Complaint.
3. Plaintiff's Motion to Amend Complaint.
4. Order Granting Motion to Amend Complaint.
5. Motion to Substitute Executrix as Defendant with Consent of Executrix.
6. Pages 3 to 5, inclusive, and pages 211 to 400, inclusive, of transcript of testimony, including that portion of the testimony of S. M. Lowrey beginning at page 241 and all of the testimony of T. G. Singlehurst, E. J. Greaney, A. L. Castle, A. L. Dean and C. R. Linden.

7. American Factors, Limited Exhibit No. "P-13" and Alexander & Baldwin, Limited, Exhibit "A."

8. Opinion of the Court filed on March 18, 1948.

9. Findings of Fact and Conclusions of Law filed December 7, 1949.

10. Judgment.

11. Certificate of Probable Cause.

12. Notice of Appeal.

13. Statement of Points Upon Which Appellant Intends to Rely on Appeal.

14. Docket Entries.

15. Designation of Record.

Dated: Honolulu, T. H., this 10th day of March, 1950.

ALEXANDER & BALDWIN,
LIMITED,

By /s/ C. DUDLEY PRATT,

By/s/ VERNON O. BORTZ,

Its Attorneys.

Receipt of copy acknowledged.

[Endorsed]: Filed Mar. 13, 1950.

[Title of Court of Appeals and Cause.]

STIPULATION AND APPLICATION

It Is Hereby Stipulated by and between the parties hereto that this application be made to the Court for an order relieving the appellant from printing or reproducing item No. 6 and Exhibit No. P-13 of item No. 7 of the Designation of Portions of Record to be Printed filed by the appellant herein.

The application to relieve said appellant from printing item No. 6 aforesaid is made because this matter has already been printed in case No. 12,391, *Kanne v. American Factors*, now pending on the calendar of the Court.

The application concerning Exhibit P-13 of item No. 7 is made to the Court because the cost of reproduction of this exhibit is prohibitive.

It is requested, therefore, that the Court consider said item No. 6 from the record printed in said case No. 12,391 and that the Court consider said Exhibit P-13 in its original form without reproduction.

This application is based on the record filed herein and the affidavit of Vernon O. Bortz, one of the attorneys for Alexander & Baldwin, Limited, attached hereto.

Dated: Honolulu, T. H., this 24th day of March,
1950.

ALEXANDER & BALDWIN,
LIMITED,

By /s/ C. DUDLEY PRATT,

By /s/ VERNON O. BORTZ,

Its Attorneys.

RAY J. O'BRIEN,

United States Attorney,

District of Hawaii,

/s/ RAY J. O'BRIEN.

Attorney for Appellee.

So Ordered:

/s/ WILLIAM DENMAN,

Chief Judge.

/s/ WILLIAM HEALY,

/s/ WALTER L. POPE,

United States Circuit Judge.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF ATTORNEY

Territory of Hawaii,
City and County of Honolulu—ss.

Vernon O. Bortz, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for Alexander & Baldwin, Limited, appellant herein, and that he makes this affidavit in support of an application for an order of the Court relieving the parties hereto from printing or reproducing item No. 6 and Exhibit P-13 of item No. 7 of Appellant's Designation of Portions of Record to be Printed; that item No. 6 has already been printed in case No. 12,319, Kanne v. American Factors, now pending on the calendar of the Court; that the cost of reproducing Exhibit P-13 is prohibitive; that it is necessary that said exhibits be considered by the Court in its determination of this cause.

Further affiant sayeth not.

Dated: Honolulu, T. H., this 24th day of March, 1950.

/s/ VERNON O. BORTZ,

Subscribed and sworn to before me this 24th day of March, 1950.

[Seal] /s/ MAIZIE M. JOINER,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission Expires Jan. 19, 1952.

[Endorsed]: Filed Mar. 28, 1950.

